

**University Policy 200.30:
EMPLOYMENT OF INTERNATIONAL SCHOLARS
(IMMIGRATION)**

Responsible Administrators: Vice President of Administration

Responsible Office: Office of the Provost/Office of Human Resources

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Policy Statement

It is the policy of Claflin University to hire international faculty, researchers, or staff in compliance with the guidelines set forth by the U. S. Department of Labor (DOL), U. S. Citizenship and Immigration Services (USCIS), Homeland Security, the Immigration and Naturalization Act, and other applicable federal and state policies and statutes.

Statement of Purpose

This policy establishes guidelines for hiring and sponsoring non-United States citizen (international) **faculty, scholars, and other specialized staff as determined by Claflin** in support of the University's teaching, research, and highly specialized service areas. The university will utilize a national recruitment effort to attract a pool of stellar and talented employees to meet the employment demands of the University.

Applicability

This policy is applicable to approved international hires for faculty, researchers or specialized staff employment at Claflin University. University sponsorship does not constitute a guarantee of lifetime employment or of tenure.

DEFINITIONS

A. H-1B

The H-1B is a specialty occupation visa category for hiring international faculty, researchers or staff for positions which require the minimum of a bachelor's degree and the work to be performed is in a specialized skill area.

B. Labor Condition Application (LCA)

The LCA is a document which must be filed with the Department of Labor (DOL) before **the** H-1B petition is processed. The LCA states that the company hiring the H-1B employee will pay the required wage rate, which is the higher of the prevailing wage or actual wage, **and provide similar benefits as accorded to other US employees.**

C. Legal Permanent Resident (LPR)/Lawful Permanent Resident (LPR)

A legal permanent resident or “green card” recipient is defined as a person who has been granted lawful permanent residence in the United States. A **lawful permanent resident (LPR)** is any person who is not a citizen of the United States and who lives in the U.S. under lawfully recognized and legally recorded permanent residence as an **immigrant** (an alien who has been granted the right by the USCIS to reside permanently in the United States and to work without restrictions).

D. USCIS - I - 140

The I-140 is an immigrant petition **filed by the employer** for alien **worker** (an individual who is not a U.S. citizen or U.S. national).

E. USCIS-I-485

The I-485 is an application to register permanent residence or adjust status.

H-1B Employment

Clafin University most commonly uses the H-1B temporary professional worker category for faculty, researchers, and certain specialized staff positions.

The H-1B is a specialty occupation visa category for hiring international faculty, researchers or staff for positions which require the minimum of a bachelor’s degree in that area or equivalent and for work performed in a specialized skill area.

The H-1B employee must have met the minimum qualifications for the position, including experience, degree, any license or certificate, and any special requirements, at the time of the filing of the H-1B petition.

An H-1B petition may be approved for an initial maximum period of three years. Extensions of up to an additional three years may be obtained. Under normal circumstances, the maximum stay permitted in H-1B status is six years. This time limit is for all employment in H-1B status, regardless of employer.

It may be possible to request an H-1B extension beyond the 6-year limit for any time a person spends outside the U. S. If applicable, a list of dates and location of travel with documentation, such as, copies of entry and exit stamps in passport (preferred), travel itineraries, or frequent flyer mile postings, should be provided.

It may be possible **in certain instances** to request an H-1B extension for up to one year beyond the 6-year limit **if Clafin has elected to sponsor the foreign national for permanent residence and the application has been filed with the Department of Labor before the end of the fifth year in H-1B status.** An extension of up to three years may be possible if the I-140 has been approved and immigrant visas are not available due to visas not being available for the relevant employment category based on the individual’s nationality. A copy of the receipt or approval notice for any I-140

and I-485 filed on the H-1B employee's behalf as **well as a copy of the receipt or approved labor certification should also be provided.**

Note: H-1B periods requested should not exceed periods of funding availability.

Legal Permanent Resident

Clafin University, at its discretion, may sponsor full-time foreign nationals in faculty positions on nonimmigrant visas for Legal Permanent Resident (LPR) status, also known as green cards, based on recommendations from the hiring department and division, and a written recommendation to the Provost from the Dean. In general, the University will not sponsor staff employees who are in non-academic positions unless the individual has special qualifications that benefit the university. These determinations will be made by the appropriate Vice President and will need the approval of the President of the University. Clafin University will not sponsor students or part-time or temporary employees for legal permanent residency.

Normally, the foreign national faculty member will have undergone a minimum of one annual review indicating satisfactory performance prior to recommendation from the dean to the provost for permanent residence consideration. In exceptional cases, the dean may request that the provost waive this requirement.

PROCEDURES

Clafin University will follow immigration guidelines, and will operate in compliance with the applicable government agencies for hiring/sponsoring foreign nationals. The University reserves the right to make determinations deemed to be in its best interest. The following steps must be adhered to for University sponsorship:

The hiring department/division must provide written recommendation to the Dean.

Deans must provide written justification (at least three months in advance if possible) to the Provost for hiring, sponsoring, and transferring prospective employees on temporary professional work visas and employees seeking U. S. Legal Permanent Resident (LPR) through employment based sponsorship.

Deans must provide written justification to the Provost for extending renewal contracts to international faculty, researchers, or specialized staff employees.

Approved specialized staff positions must be recommended by the immediate supervisor/director to the concerned Vice President for hiring and extensions.

The University's Immigration Attorney will be responsible for reviewing all recommendations approved by the Provost or Vice President to ensure compliance **and to make recommendations on potential options for permanent residence.**

The University's Immigration Attorney is the only representative authorized to represent Claflin University with respect to filing employment-based petitions necessary to hire all foreign nationals (employees) sponsored by Claflin University.

Only positions that have approved funding will be considered for University-sponsored petitions for legal permanent residency.

All employees sponsored by the University for LPR are required to commit **contractually** to a minimum of three (3) years full-time employment at the University upon the granting of Legal Permanent Residence.

ELIGIBILITY REQUIREMENTS

The employment of foreign workers in the U. S. normally requires approval from several government agencies. The foreign labor certification process is the responsibility of the employer. Certification may be granted where it can be demonstrated that there are not qualified, willing, and able US workers for the position. In some cases pertaining to faculty, the University may be able to use the results of previously conducted recruitment in filing the labor certification. Foreign labor certification programs (as opposed to H-1B temporary employment) permit US employers to hire foreign workers on a permanent or indefinite basis for necessary positions.

The University will sign the *Immigrant Petition for Alien Worker* (I-140) on behalf of the employee. However, applicants must also establish that they are admissible to the U. S. under the provisions of the Immigration and Nationality Act (INA).

OPERATING GUIDELINES

Administration

The Office of Human Resources, in **consultation** with the Immigration Attorney, will be responsible for all recordkeeping requirements, will monitor the visa status of all immigration cases, and will inform the employee of any changes in the immigration status. **However, it is also the employee's responsibility to carefully monitor his/her own status to ensure he/she remains in valid status at all times. After foreign travel, the employee must provide the Office of Human Resources a copy of the visa stamp (or printout of entry/exit information from the Customs and Border Patrol) regarding the duration of the individual's approved stay in the USA.**

Recordkeeping

The following documentation will be maintained in the Office of Human Resources at Claflin University in conjunction with the H-1B filing:

An original, signed version of the *Labor Condition Application* (LCA) - filed with the Department Of Labor, **together with all accompanying documentation in the public access file as follows:**

A copy of the documentation used to establish the prevailing wage, such as the wage determination made by the Department of Labor or other basis to establish the prevailing wage.

Documentation of the basis used in the wage determination process by the University to establish the actual wage rate.

Documentation of the actual wage being paid to the H-1B Worker.

Fully completed Notice of Filing of Labor Condition Application posted for ten days or the posted Labor Condition Application.

Proof of posting notice of the position.

Evidence of notification to the H-1B worker.

Documentation regarding offers to H-1B workers, including salary and summary of benefits offered to U. S. workers in the same occupation, and explaining how employees are differentiated for benefit purposes when not all employees actually receive such benefits.

Fees

The fees associated with the H-1B are paid by the employer. The University's policy with regard to fees associated with the sponsorship for permanent residence is updated when appropriate and maintained in the University's Office of Human Resources.

Non-Compliance

Failure to comply with this policy may result in disciplinary action.

