

INTERNATIONAL EMPLOYEE HANDBOOK



**A GUIDE TO KSU VISA
SPONSORSHIP & STATUS
MAINTENANCE FOR H1B
FACULTY AND STAFF**

The following information is provided as an aide to international staff but is not meant as legal advice surpassing that of a qualified immigration attorney.

Dear Employee:

Welcome to KSU!

At Kennesaw State University, we recognize the unique contribution that international faculty and staff make to our dynamic university community, and we are so glad that you have chosen to join us. You will find this “Owl” community to be diverse, open, and welcoming to people from other lands and cultures.

Employment Visa Services (EVS) stands ready to help you in whatever way we can throughout your stay. We know that you come to KSU with important goals that reflect your career plans and your hopes for the future. We want to see you achieve your goals.

This handbook is meant to be your guide to non-immigrant visa and permanent residency sponsorship at KSU. Like any manual, however, it cannot encompass all possible scenarios or questions. Should you have any questions please feel free to contact us at hr@kennesaw.edu or 470.578.6030.

Thank you for choosing KSU and enriching our campus with your presence here. We look forward to getting to know you and assisting you throughout your stay.

Best Regards,

Employment Visa Services

EVS is the only KSU office authorized to sign and file non-immigrant and immigrant petitions on behalf of the university. International faculty/staff, international candidates, or departments may not use outside counsel to file a KSU-sponsored petition in the university's name. All employer-sponsored petitions must originate with EVS.

I. H-1B Visa Sponsorship

1.1 H-1B in a Nutshell

Reserved for “specialty occupations”, the employer seeking an H-1B on behalf of an employee must establish that the job requires the services of a professional, that the foreign worker qualifies as such a professional, and that a labor condition application has been certified by the Department of Labor.

H1B status is employer specific and job specific. This means that an employee may only work at the sponsoring employer and in the job as it was described in the initial petition. Any changes in employer or employment require a new petition.

In order to sponsor an individual for H1B status, employers are required to pay the higher of either the actual or prevailing wage. The actual wage is the wage paid to other “similarly situated” co-workers with the same duties and qualifications; the prevailing wage is the average salary paid to workers in the area of intended employment.

Additional to promising to pay the higher of the prevailing or actual wage, the employer must promise that hiring an H-1B worker will not adversely affect other co-workers. The employer must also attest that it will take certain actions in the event of a strike or lockout and that it has provided adequate

notice to other workers regarding the hiring of an international worker.

Once an H-1B petition is submitted to USCIS, processing times typically take approximately 3–4 months, unless premium processing is chosen. This time period can vary, however, particularly if the USCIS issues a Request for Evidence (RFE) requiring additional supporting documentation for the petition.

The H-1B visa has the interesting characteristic of permitting dual intent. Unlike many other visas, a holder of an H-1B visa may intend to be in the U.S. for a temporary *and* permanent period of time, opening the door to apply for permanent residency while in H-1B status.

1.2 Requirements for H-1B Sponsorship at Kennesaw State University

In order to request an H-1B visa at Kennesaw State, the following conditions apply:

- ✓ KSU will only file for full-time (100%time plus benefits) employees with an initial appointment of at least one academic year for faculty or at least one calendar year for staff.
- ✓ KSU sponsorship for H-1B status is available for positions that support the academic mission of the university and are considered “specialty occupations.”

Specialty occupation, as defined by the *Immigration and Nationality Act*, means an occupation that requires “a theoretical and practical application of a body of highly specialized knowledge,” and that the “attainment of a bachelor’s degree or higher” is usually a prerequisite to entry into the profession.

- ✓ Under the regulations, a “specialty occupation” can be shown by one of the following:
 1. a bachelor's or higher degree is normally the minimum requirement for entry into the particular position;
 2. the degree requirement is common in the industry in parallel positions among similar organizations, or the position is so complex or unique that it can be performed only by an individual with a degree;
 3. the employer normally requires the degree for the position; or
 4. the nature of the duties are so specialized and complex that knowledge required to perform them is usually obtained through a bachelors’ level or higher education.

EVS, like USCIS, relies heavily on the federal Occupational Outlook Handbook (OOH) in determining whether a Bachelor’s degree is the minimum for the field. Occupations which are not listed as requiring a BA/BS for entry into the field in the OOH will only be considered on a case-by-case basis.

- ✓ The foreign national must hold the appropriate degree for the position (at least a Baccalaureate degree in the appropriate field).
- ✓ The employee must have fulfilled or had waived any INA 212(e) two-year home residency requirements (if applicable). EVS does not provide assistance in obtaining waivers of the INA 212(e) requirement. Former J-1/J-2 participants

subject to this requirement should contact a qualified immigration attorney for information and guidance regarding INA 212(e) waivers.

- ✓ The sponsoring department is responsible for the filing fees associated with filing an H-1B petition; if USCIS premium processing is chosen for convenience rather than necessity, the international employee will be responsible for that fee.

EVS makes no guarantees that KSU will sponsor an international candidate for H1b status or that, if eligible, USCIS will grant the petition. Only EVS can determine if H1b sponsorship will proceed after reviewing all documentation. EVS considers as non-binding all agreements or promises made by the department to an international candidate regarding sponsorship.

1.3 Obtaining H-1B Status

Preparation and filing the H-1B nonimmigrant petition is a five-step process which requires, at minimum, 3 months lead-time:

Step 1: Information and Evidence Gathering

Potential/Current International Employees should complete the New or Transfer Visa Petition: H-1B documents (on Human Resources website, International Employees page), and provide all supporting documentation requested. The hiring department will need to complete and submit an H-1B request packet to Human Resources.

Step 2: EVS Review of Documents

EVS will review all documents to determine if H-1B sponsorship will proceed. EVS will also review documents to determine the required wage by comparing the prevailing wage determination from the Department of Labor (DOL) to the actual wage data provided by the

hiring department. An H-1B employer is required to pay the higher of the two wages. If KSU's wage offer is found to be inadequate, the amount must be increased, or H-1B sponsorship for the position must be abandoned.

Step 3: Department of Labor Approval (LCA)

After receiving a satisfactory wage determination, EVS files a Labor Condition Application (LCA) with DOL affirming that KSU will meet the wage and other legal requirements of H-1B sponsorship, including

- employment of the foreign worker will not harm the working conditions of similarly employed individuals
- there is currently no strike in progress
- notice of the filing of the LCA was provided to individuals at the workplace.

Step 4: Petition Submitted to USCIS

After receiving LCA certification, EVS files the H-1B petition and all supporting documents from the department and employee with US Citizenship and Immigration Services (USCIS). EVS requests the supporting documents directly from the hiring department and the international candidate. If information obtained from the applicant or department indicates that sponsorship cannot legally be pursued, the process will cease, and the offer of employment must be rescinded. If the H1b is submitted to USCIS, EVS will notify the hiring department when we receive the receipt notice and approval notice from USCIS.

USCIS Processing Times: A department may request that USCIS process an H-1B petition under regular or premium processing. Under **regular processing**, USCIS usually takes 3-4 months to adjudicate the petition. If a department chooses **premium processing**, USCIS will adjudicate the petition within 15 calendar days of receipt at USCIS. Note that

premium processing does not guarantee approval. USCIS could respond within 15 calendar days with a request for additional information, approval or denial. The above timelines do not include the time needed by EVS to review the H-1B request materials, to receive approval from the DOL, or the time it will take for delivery of the printed approval notice.

Step 5: H-1B Approval Documents

If the H-1B petition is approved, USCIS will send a Form I-797 approval notice to EVS. EVS will notify the employee & department to arrange pick up/ mailing of the H-1B approval notice (Form I-797 Notice of Approval). A copy of the H-1B petition sent to USCIS is provided to the employee by secured download, and an Employment verification letter is available upon request.

Individuals currently outside the U.S. must wait to receive the I-797 approval notice from EVS before applying for an H-1B visa stamp (unless visa exempt) from a US Embassy or Consulate abroad and entering the U.S. Visit the website of the nearest U.S. Embassy or Consulate to make a visa appointment, submit required fees, and to get more information about what documents to bring to your appointment.

Although H-1B petitions may be submitted up to 6 months before the requested start date, individuals with approved petitions may enter the U.S. no earlier than 10 days before the petition takes effect.

1.4 Employment Authorization

Upon entry to the U.S. for H-1B employment at KSU, individuals will receive a small white I-94 card in their passport. Keep this card safe! This card – not the visa or I-797 approval notice – is evidence of legal status and employment eligibility. Once in the U.S., the individual may begin work once the start date of the approval

has been reached and he/she has attended HR orientation.

Individuals currently working in another non-immigrant status (F-1, J-1, OPT) may only work under the terms and conditions of their current status. Upon expiration of that authorization, an individual must be removed from payroll and may not continue to work. The individual may resume employment only upon approval of the change of status to H-1B. F-1 or J-1 students may not work during the “grace periods” after the expiration of their status. Once the H1b is approved, the employee will need to go to the U.S Customs and Border Protection website (<https://i94.cbp.dhs.gov/i94/#/home>) to print a new I-94 card.

The individual with a pending change of status H1b should not travel outside the US until the H-1B petition has been approved. If an individual must travel while the H-1B is pending, he or she must remain outside the U.S. until the H-1B is approved and obtain an H-1b visa in order to re-enter the U.S. and resume employment. For more information, please see 1.6 Travel and Reentry to the U.S. below.

Individuals currently working for another employer in H-1B status cannot begin work with KSU until the I-797 receipt notice from USCIS has been received by KSU. The receipt notice serves to verify proper filing of a KSU-sponsored H-1B petition to “port”, or transfer, the current H-1B to KSU. Those changing H-1B employers must continue employment with their current H-1B sponsor until KSU files the H-1B petition with USCIS. Individuals whose KSU petitions are ultimately approved by USCIS may go to the U.S Customs and Border Protection website (<https://i94.cbp.dhs.gov/i94/#/home>) to print their I-94 card.

All new employees are required to attend **Human Resources Orientation** before

beginning their employment at KSU. HR will contact the employee directly to schedule an orientation appointment. At orientation, employees are required to present documentation verifying their employment eligibility in the U.S. as part of the federal form I-9 process. For H-1B employees, the following documents verify one’s eligibility to work for specific employment connected to a KSU-sponsored H-1B petition:

- Passport and valid I-797 H-1B Approval Notice with green I-94 card at the bottom;
- Passport and valid white I-94 card issued at port of entry for H-1B status; or
- Passport and valid I-94 card for another employer and I-797 H1b receipt notice for KSU H1B filing (for H1b transfers to KSU). Please note that employment eligibility will need to be re-verified upon H1b petition approval.

KSU is a participant in the federal **E-verify program** which matches the data the employee provides during the I-9 process against Department of Homeland Security and Social Security Administration databases to ensure that KSU maintains a legal workforce. Per E-verify regulations, KSU must collect a Social Security number from each new employee. Please contact EVS immediately if you do not have a U.S. Social Security number.

1.5 Length of Stay in H-1B Status

Non-immigrants in H-1B status are eligible for a total maximum stay of 6 years. The initial H-1B petition may cover a period of up to 3 years and may be extended, before the expiration date, to a total of 6 years.

The 6-year statutory limit on H-1b is cumulative, not per employer. Time spent as an H-4 or L-2

dependent does not count against the 6-year limit.

Pursuant to the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), individuals may request **additional extensions of stay beyond the 6-year maximum** where a Labor Certification Application or an I-140 Immigrant Petition was filed on their behalf over one year ago.

AC21 also allows for extensions beyond the statutory 6-year limit for those individuals who are the beneficiary of an approved I-140 petition for permanent residency, but who cannot apply for adjustment of status (green card) due to the unavailability of visa numbers. In particular, this provision allows those individuals from China and India to continue renewing their H-1B status while they wait for their EB2 priority dates to become current.

H1B extensions should be requested no later than six months before the expiration of the employee's current H1b status. Although EVS will generally send reminders to the department regarding extensions, it is also the employee's responsibility to remind their department. Departments are under no obligation to request an extension of H1B status for their employees, and EVS will only act upon department sponsorship approval of the extension – not requests by the employee. If a department does not approve sponsorship of an extension, the H1B faculty/staff member's employment at KSU will terminate upon the expiration of his/her current H1b petition unless he/she has other means of continued employment eligibility. The extension process mirrors that of initial petitions.

Once a non-frivolous and timely petition to extend H-1B status has been filed with USCIS, the H-1B worker can continue working 240 days past the expiration of the initial H1B period while the extension is pending. If the extension

of status is not granted, however, employment must cease immediately.

1.6 H-1B Travel and Re-entry to the U.S.

If you are taking a trip outside the United States, please contact EVS at least two weeks before your departure so that we can provide you with up-to-date travel information as well as the necessary documentation for your trip. Generally, you will need the following to re-enter the U.S.

- ❖ valid passport
- ❖ original Form I-797A (H-1B Approval Notice for your current position)
- ❖ letter from EVS confirming current employment in the position described in the H-1B petition
- ❖ valid H-1B visa stamp in your passport, unless visa exempt. If you do not have a valid H-1B visa stamp in your passport, you must apply for one at a U.S. Embassy or Consulate abroad.

If you have changed and/or extended your non-immigrant status while in the United States and have never had an H-1B visa stamp in your passport, or if your H-1B visa stamp has expired, you must apply with a U.S. Embassy or Consulate outside of the U.S. to **obtain an H-1B visa for re-entry**. Generally, you will need to present the following documentation:

- ❖ original Form I-797A (H-1B Approval Notice for your current position)
- ❖ copy of Form ETA-9035 Labor Conditions Application (LCA)
- ❖ copy of Form I-129 (petition for H-1B submitted to USCIS on your behalf)

- ❖ letter from EVS confirming employment and that KSU expects you to resume employment
- ❖ original waiver or proof of fulfillment of the two-year home residency requirement (if applicable)
- ❖ valid passport (valid 6 months into the future)
- ❖ Form DS-160 (available on Embassy/Consulate website)

Please contact the specific U.S. Consulate or Embassy where you plan to schedule an appointment for other requirements, including photos and fees.

Although it is always recommended that an H1b holder apply for a visa at the U.S. embassy or consulate in his/her home country, some U.S. embassies abroad do allow **third party nationals** – citizens of countries other than the one in which the embassy is stationed – to apply for visas. Employees should contact the specific U.S. embassy or consulate directly to determine if this is a possibility.

Electronic verification of H-1B case records is done at U.S. consulates and embassies using the **Petition Information Management Service (PIMS)** system. Not all cases are in PIMS and this can cause delays in visa issuance. Additionally, certain professions and fields of study/research require additional **administrative and security checks** before a non-immigrant visa can be issued. This, too, may cause delays. KSU faculty and staff are **strongly** encouraged to schedule visa appointments at U.S. Consulates or Embassies with sufficient time prior to a planned re-entry into the U.S. to accommodate any unexpected delays in processing.

1.6.1 Traveling to Canada, Mexico for less than 30 days

If you have an expired H-1B visa stamp and you have an I-94 card stating your current valid H-1B status, your visa will be considered automatically revalidated when you re-enter the U.S. from Canada or Mexico as long as ALL of the following are true:

- ❖ you have only been in Canada or Mexico for less than 30 days,
- ❖ you have with you a current I-94 card stating your valid H-1B status,
- ❖ you do not apply for a visa while in Canada or Mexico, AND
- ❖ you are not from one of the countries currently considered by the U.S. Department of State to be state sponsors of terrorism.

For this automatic revalidation to apply, you must be careful to keep your I-94 card when leaving the U.S. to enter Canada or Mexico for a trip of less than 30 days. Present your I-94 card along with your valid passport, original Form I-797A (H-1B Approval Notice), and a letter from EVS confirming current employment in the position described in the H-1B petition.

1.6.2 Travel while change of status to H-1B is pending

A non-immigrant who is changing from one non-immigrant category to another (F-1 student to H-1B, for example) is considered to be “changing status.” Traveling while changing status can have significant consequences. A non-immigrant who travels abroad while an application for change of status to H-1B is pending is considered to have abandoned the

change of status portion of the petition. Only the change of status portion of the H-1B application is affected by travel, though. If the H-1B petition is later approved, and the international is still abroad, he or she can apply for an H-1B visa at a U.S. consulate and then enter the United States in H-1B status.

If an employee who departed the United States while an application for change to H-1B status was pending reenters the United States in another non-immigrant category (B-1 visitor or F-1 student, for instance), he or she is not considered to be in H-1B status even if USCIS subsequently approves the change of status request that was pending at the time of departure. In that case, the employee must exit the United States with the approval notice, obtain an H-1B visa and then reenter in H-1B status.

1.6.3 Travel while H-1B extension of stay is pending

Unlike travel while a change of status application is pending, travel while an extension of stay application is pending is not viewed as an abandonment of the extension application.

Although an application for extension of stay is not considered abandoned if the employee departs while the application is pending, when the employee needs to re-enter the U.S., he or she must have both a valid H-1B visa as well as a valid I-797 Approval Notice. If the extension of stay is not approved by the time the employee needs to re-enter, he or she can use a prior approval notice, but only if the period of employment on that notice has not yet expired.

Travel during the 240-day automatic extension of work authorization after the current H-1B period has expired is not recommended. If the employee cannot avoid traveling abroad during

this period of time, he or she must remain abroad while awaiting the H-1B extension approval in order to be able to apply for a new visa (unless visa exempt) and be readmitted to the United States in H-1B status.

1.6.4 I-94 and Re-entry

When returning from abroad, Customs and Border Protection (CBP) will inspect your documents and determine whether you are eligible for admission into the U.S. In addition to your passport and visa, we recommend carrying the I-797 H1b Approval Notice, the employment verification letter, and copy of the H1b petition in case CBP requests them. Better to be safe than sorry! If admitted, CBP will issue a new I-94 card annotated with 'H1b' and an expiration date. This I-94 card is evidence of legal status in the U.S. and should be kept in your passport and with you at all times. The expiration date stamped or written on the I-94 controls your H1b status in the U.S. and is the date by which CBP expects you to leave the country.

Remaining in the U.S. after the I-94 expiration date without applying for a change/extension of status is considered "overstaying" your status.

Some individuals find that CBP stamps their I-94 cards with an expiration date which is earlier than the expiration date listed on the I-797 H1b Approval Notice. This happens because the individual's passport expires before the expiration date listed on the approval notice. If that's the case, CBP rules only allow officers to stamp the I-94 with a date 6 months short of the passport expiration date, or, for individuals from certain countries, with the date of the passport expiration. No matter what the I-797 H1b Approval Notice says, the date listed on the I-94 controls!

If this happens to you, there are several ways to fix this. Renewing your passport and taking

another trip abroad (not necessarily to your home country) is the easiest fix. When you re-enter the U.S. with the newly extended passport, CBP will give you a new I-94, stamped with the H1b petition expiration date.

When you return from abroad, EVS requires you to send a copy of your new I-94. Because this small white card controls your stay and employment eligibility in the U.S., it is imperative that we have a copy on file. Should we notice any issues with the expiration date on the card, we can address them immediately.

1.7 H1B Employment Restrictions

H-1B employment is **specific to the employer and specific to the particular position**, department, location, number of hours, and duties. The department and employee must contact EVS prior to any changes in the terms and conditions of employment, including, but not limited to, changes in title, number of hours, duties, pay, and location. EVS will determine if an amended petition must be filed with USCIS.

NOTE: failure to consult EVS may put KSU and the individual employee at risk for sanctions and penalties by DHS and DOL.

Under federal law, H-1B employees may not have **access to controlled technology** without the appropriate license. Should an H1B employee's duties require access to such technology, contact EVS immediately so that an appropriate license can be obtained. Failure to do so puts the university and employee at risk for penalties by DHS and the Department of State.

H-1B employees are not allowed to accept **honorarium** or payment for services from

outside sources unless those sources have filed a con-current H1b on the employee's behalf.

An H-1B employee's **primary purpose** in the U.S. must be to work. Although H1B employees are not prohibited from attending class part-time, if the primary intention changes to full-time study, the employee cannot hold H1B status.

The H-1B worker must be paid the "**H-1B required wage**" as determined at the time of hire. The "H-1B required wage" for an H-1B employee must be the higher of the two wages: either the "actual wage", the wage paid to similarly employed workers at KSU, or the "prevailing wage" paid to similarly employed workers in the metropolitan area as determined by DOL.

The H-1B employee must have access to the **same benefits** as all similarly situated U.S. workers and may not be benched, furloughed, or otherwise placed in a non-productive state by a decision of the employer. These provisions of the H1b regulations do not limit the employee's ability to voluntarily place him/herself in a non-productive state through use of vacation time, sick time, FMLA or other voluntary leave time.

Per federal law, H1b employees should carry **proof of their status** with them at all times. For H1B employees, this proof includes your passport and valid I-94 card.

Federal law requires that all non-citizens contact the Department of Homeland Security each time their **address changes**. Individuals must do this within 10 days of moving. Please see the USCIS website for additional information including the online Address Change form.

1.8 End of Employment

The department and employee must inform EVS prior to the end of any H-1B employment if an employee resigns or his/her employment is terminated for any reason. Federal law requires that KSU notify USCIS and the Department of Labor immediately upon employment termination in order to withdraw the LCA and H1b petition.

Employers who terminate an H1-B employee before the end of that employee's period of authorized stay are liable for the "reasonable costs" of return transportation for the employee to his or her last country of residence abroad. The employer's liability is limited to the reasonable cost of physically returning the H-1B employee and does not extend to the cost of relocating family members or property.

Terminated H-1B employees who believe an employer is not complying with this obligation should contact EVS immediately.

The return-transportation responsibility does not apply to employees who voluntarily resign before the expiration of their current H1b status. This provision also does not apply in those instances where a department chooses not to renew an H1b employee's status and allows the employment relationship to terminate naturally at the expiration of the employee's current status.

Regulations require an H-1B employer to notify USCIS "immediately" of "any material changes in the terms and conditions of employment" affecting an H-1B employee. USCIS policy indicates that employment termination/resignation constitutes a "material change." EVS satisfies this notification obligation by sending a request for H1b withdrawal to USCIS and the DOL.

After receipt of this request, USCIS automatically revokes the employee's H-1B petition.

Contrary to popular belief, there is **no "10-day," "30-day" or other grace period** for terminated employees holding H-1B status. Once the employment relationship terminates, the H-1B employee is out of status and must, therefore, leave the U.S. immediately or change to another non-immigrant status.

H-1B employees who remain in the United States after termination of their H-1B employment without applying to change status are in violation of their status, and persons in violation of their status are generally not allowed to change, amend or extend their status. USCIS may, however, exercise discretion on a case-by-case basis to grant the extension, change or amendment of status in spite of the failure to maintain status.

Terminated H-1B employees should be aware that time is not on their side. If the employee has plans to have another H-1B petition filed on his or her behalf or to change to another nonimmigrant status, those plans should be implemented as quickly as possible.

H-1B employees should consult EVS immediately if his or her H-1B employment with KSU ends for any reason, including voluntary resignation.

1.9 Dependents

The spouse and unmarried minor children (under 21 years of age) of H-1B status holders are eligible for H-4 dependent status.

To obtain H-4 status, a dependent must either:

1. Apply for an H-4 visa stamp at the U.S. Embassy or Consulate overseas (unless

visa exempt). Upon entry to the United States, dependents must present a copy of H1-B status holder's I-797 approval notice, passport and his/her H-4 visa stamp (accompanied by any supporting documents) at the U.S. Port of Entry; or

2. Apply for an I-539 Change of Status in the U.S. when the principle's H1b application is submitted. Please contact EVS for more details. The fees associated with the change of status petition for dependents are the employee's responsibility.

H-4 dependents are NOT eligible to work in the U.S. However, H-4 dependents may study in the U.S., as long as their primary purpose in the U.S. is to accompany the H-1B status holder. As a student, however, the H-4 dependent may not hold any student employment or assistantships.

H-4 dependents follow similar travel and re-entry procedures as the H-1B status holder.

The duration of the H-1B status holder's program is stated on the I-797 and the I-94 card. If the H-1B is eligible and applies for an extension of stay, the H-4 dependent may also apply for an extension by filing Form I-539 with the USCIS. This form can be filed concurrently with the H-1B's extension or separately, as long as it is before the expiration of H-4 status. The fees associated with H4 status extensions are the employee's responsibility.

Maintaining the status of all dependents is the responsibility of the H-1B holder.

1.10 Take Responsibility

The above information is provided as a service to international staff and faculty. Although EVS is happy to provide information and guidance, it is ultimately the H1B holder's responsibility to

know and understand all rules related to the legal maintenance of his/her status in the U.S.

II. PERMANENT RESIDENCY PROCESSING

Kennesaw State University only supports and sponsors employment-based permanent residency applications for full-time tenure and non-tenure track faculty positions involving some classroom teaching duties (excluding Limited Term positions), and full-time staff positions in a specialized occupation (such as information technology). Staff requests will be reviewed on a case by case basis.

2.1 Guidelines

Permanent residency allows a foreign national to live and work in the U.S. indefinitely. Kennesaw State University will support a petition for Employment-Based Permanent Residency only under the following conditions:

- The position is classified as Faculty Corps of Instruction under the Board of Regents Policy Manual Section 3.2.1.1, or as an Administrative Officer under section 3.2.1.2 who retains rank and tenure as an ex officio member of the Corps of Instruction.
- The position must be designated as full-time tenure or non-tenure track and include some classroom teaching duties or a staff member in a specialty occupation (like information technology), (reviewed on a case by case basis).

- The applicant's education and experience are in the same field of study as the position in which they will be doing instruction or administration.
- The applicant's education and experience are commensurate with the job description for similar positions across the university and the University System of Georgia.
- The applicant met all requirements of the position at the time of selection and was found more qualified than all U.S. workers who applied.
- The recruiting procedure meets Department of Labor criteria for Optional Special Recruitment and can be documented accordingly (for EB2 petitions).
- The faculty member can make a good faith claim to international recognition under USCIS regulations (EB1 petitions).
- The department is financially able and willing to cover the fees required for filing the form I-140. The department may also have cause to cover the additional premium processing fee required to expedite processing within 15 days in unique circumstances but is not required to do so.
- The position cannot include a set end date for employment; the intention must be long term employment, barring any normal issues that would end in termination.
- The applicant must have, at the time of hire, education and experience commensurate with the position's requirements as listed in the position advertisement.

- The department requests permanent residency sponsorship in writing.

Kennesaw State University does not authorize, under any circumstances, outside counsel or representatives to sponsor staff or faculty employees for employment based permanent residency in KSU's name. Doing so is a violation of federal and Georgia state law. All KSU employment-sponsored petitions must originate with EVS. Beneficiaries of EB1 permanent residency petitions may opt to consult outside counsel regarding their EB1 documentation, but under no circumstances will KSU cover the expense or be under any obligation to follow the advice of outside counsel. Although counsel's advice may be sought, the I-140 immigrant petition itself **must** be filed by KSU, not outside immigration counsel.

2.2 Procedure Overview

KSU will consider processing Employment-based Permanent Residency for an individual only if the department agrees to sponsor the petition and to fund the associated filing fees. Departments are only required to pay the filing fee for the I-140 petition, and in cases of demonstrated necessity, the premium processing fee associated with the I-907 form. All other fees **must** be paid by the employee. Departments are under no obligation to sponsor their faculty for permanent residency. The department head must be in full support of any Permanent Residency request prior to EVS committing to the process, and no petition will be initiated without express written consent from the department head.

The Permanent Residency process is a three application process. In most cases, Labor Certification must be obtained from the

Department of Labor before KSU can move on to the immigration applications.

The initial I-140 immigrant petition is completed and filed by the sponsoring employer. The subsequent I-485 adjustment of status application(s) is completed and filed by the employee. The employee and each dependent must file separate I-485 applications. I-140 and I-485 applications can be filed concurrently if employment-based visa numbers are readily available (see the Department of State's Visa Bulletin). If not, the I-485 cannot be filed until the I-140 has been approved and the applicant's "priority date" is current. Additional forms associated with the I-485 include I-131 Advance Parole and I-765 Employment Authorization. These must also be completed by the applicant. Because the process is lengthy, **departments should initiate the permanent residency process:**

- No earlier than one full semester after the employee begins working for KSU but no later than 6 months after the date the original offer letter was issued.

This timeline is critical to ensure that KSU files the required labor certification application within 18 months of the date the VPAA's offer letter was issued. Doing so allows KSU to take advantage of special provisions of the law for university teachers and to avoid a costly and duplicative re-selection (i.e. re-recruitment effort).

The department must conduct a re-selection process in order to proceed with permanent residency sponsorship if the 18-month deadline is missed or if DOL regulations were not followed in the original recruitment effort. Re-selection requires that a bona-fide re-recruitment take place (including at least one ad in a national professional journal) and that the international employee is found more

qualified than all U.S. workers who apply for the position.

2.3 Documentation

A great deal of the permanent residency process revolves around the assembling of voluminous documentation. HR can receive documentation in electronic form wherever originals or documents on official letterhead are not required for submission. USCIS prefers copies be sent in with the applications but can request originals be presented at any time after the filing is submitted. Therefore, it is necessary for applicants to assemble all original documents in preparation for filing and to provide copies to HR for actual submission. Original documents - especially birth certificates, marriage certificates, etc. - should be maintained by the employee in a secure place in case of audit by USCIS.

2.4 Beginning the Process

After approximately one full teaching semester, EVS will contact the department to determine if there is an interest in permanent residency sponsorship. If so, EVS will consult with the sponsoring department and the sponsored employee to determine the most appropriate type of I-140 petition. Each type of I-140 petition requires different types of evidence of the employer and the employee.

There are several categories for which KSU can sponsor Employment Based Permanent Residency. All documents related to employer sponsorship must be approved, signed and submitted by EVS representatives only. KSU does not authorize outside attorneys to submit employer-based petitions on our behalf.

2.4.1 Overview of Categories

KSU will sponsor employment-based visa petitions for the categories listed below.

2.4.1.1 Outstanding Professors and Researchers EB-1(b)

The Outstanding Professor/Researcher category is reserved for those considered outstanding in their specific field, who have obtained international recognition as a Professor or Researcher, and who have been a professor for at least 3 years. Only tenured/tenure track faculty may use this category, and extensive evidence is required.

USCIS requires proof that the individual “stands apart in the academic community through eminence and distinction based on international recognition.” USCIS requires certain types of evidence in order to establish that the individual meets this standard. Please contact EVS for more information.

Before filing the I-140 and supplemental evidence of international recognition, EVS will review and ensure that a good faith claim can be made to the EB1 Outstanding Professor category. KSU will not submit an EB1 petition where EVS professionals do not believe the EB1 standard has been adequately documented.

If the faculty member was selected for the position more than 18 months ago and can meet the rigorous evidentiary requirements, this may be the best option as this category does not require Labor Certification. KSU can apply directly for the I-140 without analyzing the recruitment that took place for the employee’s position or obtaining Department of Labor approval.

2.4.1.2 Advanced Degree Professionals EB- 2(a)

This is the most common route to an I-140 approval for teaching faculty at KSU. In order to pursue this category, the position must require classroom teaching duties and at least a Master’s degree in the appropriate discipline for the position. The employee must have the required degree for the position.

This process, unlike the EB1(b) process, requires a prevailing wage determination and approved Labor Certification from the Department of Labor before KSU can file the immigration forms with USCIS.

2.5 The Permanent Residency Application Steps

2.5.1 Department of Labor Applications (EB2 ONLY)

These Department of Labor steps are only required for EB2 petitions. EB1(b) petitions can proceed directly with the I-140 application to USCIS.

For EB 2 petitions, Department of Labor regulations require KSU establish that hiring an international worker for a permanent position will not negatively impact U.S. workers. To do so, KSU must prove that it will pay a certain wage to the international worker, that steps were taken in the recruitment to ensure it was open to U.S. workers, that the chosen faculty member met all job requirements and was more qualified than all U.S. workers who applied for the position. For Department of Labor purposes, “U.S. worker” is defined as citizens, permanent residents, refugees, and asylees.

2.5.1.1 Advertising and Recruitment

Department of Labor compliance for EB2 petitions begins at the recruitment stage. Department of Labor regulations allow KSU to take advantage of the original recruitment effort in applying for Labor Certification if certain rules were followed. Optional “Special Recruitment” can be invoked only if.

1. the position was posted, preferably in print, in at least one national professional journal;
2. The national professional journal ad included job title, duties, minimum requirements;
3. the applicant was identified through a competitive recruitment process;
4. the foreign national was found to be “more qualified than any of the U.S. workers who applied for the job;” and
5. the labor certification must be filed within 18 months from the date of the job offer letter, not the start date.

If any of the above criteria were not met in the original recruitment effort, the employer must complete a new test of the labor market, which amounts to a new competitive recruitment effort.

Special Recruitment requires extensive documentation of the recruitment process by the hiring department. Hiring departments will have to provide copies of the print job advertisements, as well as a detailed report regarding the number of total applicants and the specific, lawful reasons why they were not deemed as qualified as the foreign national.

The Department Chair/Supervisor should supply:

1. Documents justifying any restrictive or unusual job requirements like foreign language skills
2. Copy of all national/international advertisements of job posting that display the name of publication and dates published, position title, duties and minimum job requirements on each copy
3. Websites, including KSU and USG Applicant Clearinghouse
4. Journals, including Chronicle of Higher Education or professional journals
5. Detailed Recruitment Report
6. Detailed Statement of why the International Candidate was chosen
7. Spreadsheet detailing all applicants and lawful reasons for rejection.

These documents are required as part of the H1b sponsorship process so a determination regarding permanent residency eligibility can be made early.

If this information cannot be produced, EVS cannot proceed with a labor certification application or an EB2 petition. The employee must either qualify for the EB1 category or a new labor market test must be conducted before sponsorship can proceed.

2.5.1.2 Prevailing Wage determination

Once the advertisement and recruitment is in order, the next step is the prevailing wage determination. EVS will obtain a prevailing wage determination from the National Prevailing Wage Center (NPWC) by completing a form which asks for the responsibilities, skills,

experience, as well as other factors required for the job.

KSU must pay the higher of the prevailing wage or the salary actually offered to the employee. If the prevailing wage is determined to be higher than the applicant's current salary, the option exists to increase the applicant's salary to meet the prevailing wage or to terminate the petition for permanent residency.

The turnaround time for prevailing wage determinations averages 8 weeks but may take longer in cases where the NPWC provides an unsatisfactory response.

2.5.1.3 Labor Certification

The purpose of Labor Certification is to satisfy the U.S. DOL that the position was open to qualified U.S. workers and none were found as well qualified as the international employee. To obtain a labor certification, EVS uses the prevailing wage determination as well as the recruitment information to file form ETA-9089 online with the U.S. Department of Labor through the PERM system. The PERM application must be submitted well in advance of the expiration of the Prevailing Wage Determination and, preferably, within 18 months of the date the employee's offer letter was issued.

Once the Labor Certification is filed, EVS will receive a notice of acceptance for processing. This date listed on this notice will eventually translate into the employee's Priority Date, which indicates the date he/she entered processing for Permanent Residency. The Priority Date is used to determine when the employee will receive a visa number later in the process. The turnaround time varies greatly for labor certifications and can take up to several years if audited.

A hard copy of the Labor Certification will be mailed to EVS upon certification and the original must be signed by both a representative from EVS and the beneficiary immediately. This original Labor Certification must be submitted within 6 months of approval as part of the I-140 petition by KSU.

2.5.2 Filing of I-140 Visa Petition (EB1b and EB2)

Once the Labor Certification is approved and prior to its expiration (if applicable), EVS will submit an I-140 Immigrant Petition for Alien Worker along with all supporting documentation and filing fee to USCIS. Before submitting the petition to USCIS, EVS will review all documentation to ensure that a good faith claim to the category can be made. Spouses and minor children should be included on the I-140 as derivative beneficiaries.

The department is required to pay the filing fee for the I-140 Immigrant Petition. Once the I-140 is mailed, a notice of receipt is usually received in the mail within two weeks. It can take USCIS between 4-8 months to adjudicate an I-140 petition, depending on the EB category. The progress of the I-140 petition can be tracked on the USCIS website. Requests for Evidence (REs) can significantly slow the process.

If an employee's priority date is current, as determined by the most recent Department of State Visa Bulletin, the applicant can file both the I-140 and I-485 petitions concurrently.

NOTE: The I-140 approval does not by itself change the employee's legal status. It is imperative that the applicant maintain current non-immigrant visa status until they are granted Permanent Residency. There are special laws in place that allow for extensions of H-1B status

beyond the 6-year limit where the employee is in the permanent residency process.

2.5.3 Filing an Application to Adjust Status (Form I-485)

Once an I-140 is approved and the individual's priority date is current, the employee, spouse, and minor children in the U.S. must each file individual I-485 applications to become permanent residents. As the I-485 is a personal application, the employee is responsible for all costs associated with the I-485 filing, including filing fees and biometrics. There are additional forms and fees associated with the I-485 packet for which the applicant will also be responsible. These include requests for employment authorization and travel documents.

For legal reasons, KSU does not assist employees in completing the I-485 packet. Because the I-485 is specific to the individual (not KSU), employees are encouraged to seek outside counsel in completing and filing the I-485 applications for themselves and dependents.

If visa numbers are immediately available for the applicant's category and home country, the employee may file the I-485 application at the same time KSU files the I-140 Immigrant Petition. If an employee will be submitting the I-485 concurrently with KSU's I-140 petition, he/she should drop off the completed I-485 packet to EVS. EVS will include the I-485 application(s) in the same envelope as the I-140 petition but will not review the I-485 packet for completeness or accuracy. Once USCIS receives the packet, all receipt notices and approvals for the I-485 will be sent directly to the employee at the address provided on the form.

If an employee is unable to file concurrently, he/she can submit the I-485 packet once the I-140 is approved and a visa number becomes available.

NOTE: Keep in mind that H1b and H4 non-immigrants can continue to travel outside of the country with their H1b or H4 visas without being deemed to have abandoned their I-485 application. However, most other non-immigrant categories require Advanced Parole before departing the U.S. while the I-485 is pending. Contact qualified immigration counsel for more information.

2.6 Other Permanent Residency Petitions

Although there are many other forms of permanent residency petitions – Extraordinary Ability, National Interest Waiver, Family-based – these petitions do not require employer sponsorship. KSU will not provide assistance or guidance on these types of petitions. Although all employer-sponsored permanent residency petitions must originate with EVS, employees who are interested in obtaining permanent residency through non-employer sponsored categories should contact a qualified immigration attorney for guidance.

2.7 Receiving the Green Card and Beyond

Once USCIS approves the I-485, a Permanent Residency Card ("green card") will be mailed to the applicant. If your spouse or minor children also submitted I-485 applications, they will also receive their green cards by mail. It is important to update your address with USCIS should you move while the I-485 is pending to ensure that your card is delivered to your new address.

Employees should contact EVS once they have received the permanent residency card so that their immigration file can be properly closed, and their I-9 Employment Authorization revalidated.

Once you obtain permanent residency, maintaining and renewing your status is entirely

up to you. EVS cannot advise former H-1B employees regarding immigration issues related to their new permanent resident status or future applications for citizenship. Please review the USCIS website or contact a licensed immigration attorney should you have questions regarding these areas.

Immigration law is always evolving. Please check with EVS to ensure the accuracy of the information provided or to ask questions regarding non-immigrant and immigrant sponsorship at KSU. Additional information, including frequently asked questions, is available on our website at:
<https://hr.kennesaw.edu/employees/international-employees.php>
Email: hr@kennesaw.edu
Phone: 470.578.6030