

POLICY ON HIRING FOREIGN NATIONALS

I. Purpose

- A. Frostburg State University often hires foreign nationals to fill faculty and administrative positions. These foreign nationals have made contributions to the mission of the departments in which they serve. Hence, the purpose of this policy is to provide guidelines on the hiring of foreign nationals, to ensure that all hires are in compliance with federal and state law, regulation, and procedure, that each holds the proper form of VISA, based upon individual circumstances and role at the University and to clarify the role and responsibility of FSU in the immigration process. The Office of Human Resources is charged with administration of this policy and pledges to provide the level of support necessary to support the faculty member while at the same time guaranteeing that the University remains in compliance.
- B. A foreign national, for the purpose of this policy, refers to a citizen of another country or an individual who is not an American citizen.

II. Policy

- A. Frostburg State University prohibits the employment of a foreign national unless the applicant can meet the requirements of the Immigration Reform and Control Act of 1986 (IRCA). As with U.S. citizens, foreign nationals must present documents to prove identity and eligibility to work and must complete the I-9 Form.
- B. The hiring of foreign nationals must be restricted to full-time regular positions such as tenure-track faculty positions and professional administrative positions where there are no American candidates who are willing, qualified, and available. A request to apply for an H-1B VISA, the most common form of VISA required for employment, for an adjunct faculty position or for a part-time contractual position will not be approved.
- C. Per federal law, any position earmarked for an H-1B petition must require a minimum of a bachelor's degree or higher. Departments or search committees wishing to hire a foreign national must show proof that the selected foreign national meets the minimum requirements of the job and is more qualified than other individuals who applied.

III. Meeting with Applicants

Applicants who have identified themselves as foreign nationals must be made aware of certain USCIS immigration requirements relating to employment. To assure that this occurs, foreign nationals must meet with the Office of Human Resources at the time of interview. The meeting will enable the Office of Human Resources to determine which visa category should be pursued should the candidate be hired.

IV. Procedures

- A. The Office of Human Resources is responsible for filing and submitting H-1B petitions to the United States Citizenship and Immigration Services (USCIS). Hence, all requests to file petitions for an H-1B must be submitted in writing to the Office of Human Resources. The Office of Human

Resources will file the petition when it is satisfied that the hiring of such a foreign national has met the FSU hiring requirements.

- B. As it takes approximately six months to get approval from the USCIS, a request to file for an H-1B must be submitted to the Office of Human Resources six months before the start date. Requests must include detailed information about the foreign national, the reasons for hiring the foreign national, where the position was advertised, the number of applicants applying for the position, and names of search committee members.
- C. A request to file for an H-1B received less than six months before the starting date of employment will not be approved unless the department wishes to pursue *premium processing*. The premium processing alternative, guarantees a decision from USCIS within fifteen business (15) days and requires a \$1000 premium processing fee per applicant. Payment of this fee is the responsibility of the hiring department.

V. Prevailing Wage Rate

- A. All applications for an H-1B or alien labor certification for permanent employment are subject to prevailing wage requirements, i.e. the rate of pay for the employee must be based on the prevailing wage rate established by the Maryland State Employment Security Agency (SESA). If the prevailing wage rate is higher than the FSU rate of pay, the SESA rate must be paid.
- B. The hiring of American citizens is not subject to prevailing wage rate requirements.

VI. Permanent Residency

- A. Under USCIS rules and regulations, an H-1B is normally issued for an initial period of three years and can be extended for an additional three years. After six years, these foreign nationals have to leave the country unless they change their status to permanent resident or become U.S. citizens.
- B. Frostburg State University consults with foreign nationals preparing to file for permanent residency in order to ensure understanding of the process and to monitor progress toward permanent residency. Tenure-track faculty members should begin the consultation process once they have been renewed for their second year. The University has a contract with an outside law firm to file applications for permanent residency (green card) on behalf of foreign nationals who are hired through an H-1B. The University is committed to facilitating the process of application for permanent residency. The University does not provide legal advice to foreign nationals on such matters.
- C. Frostburg State University is responsible for all fees associated with the Application for Permanent Employment Certification (ETA Form 908). Any fees associated with the filing of (Form I-140) Immigrant Petition for Alien Worker, (Form I-485) Application to Register Permanent Residence or Adjust Status shall be the responsibility of the foreign national.

(Approved 9/2006, Amended 8/2011)