Frostburg State University

Guide To The Recruitment and Hiring Process For Foreign Nationals
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Recruiting and Hiring Foreign Nationals at Frostburg State University

This guide is to assist you in better understanding Frostburg State University’s sponsorship and hiring of foreign nationals for short-term employment, exchange-visitor programs, and permanent residence filings; to ensure compliance by the University with current laws and regulations regarding sponsorship of foreign nationals promulgated by the U.S. Citizenship and Immigration Services (USCIS), U.S. Department of Labor, U.S. Department of State and other pertinent federal agencies.

The ADA/EEO Compliance Office provides immigration services to international faculty, researchers and visiting scholars, as well as members of their immediate families. The office will advise foreign nationals on obtaining and maintaining lawful status while at the University.

Foreign Nationals who are offered employment must apply for a nonimmigrant visa which allows them to be employed in the U.S. There are a number of different types of nonimmigrant visas from which to choose depending upon the employee’s position and duration of employment.

Types of Visas

B-1 Business Visitor Visa

General Information: Foreigners working for a foreign entity are allowed to visit the United States under a B-1 business visitor visa. Foreign nationals interested in visiting the United States for exploratory business purposes that do not involve receiving salary or payment are eligible to apply for a B-1 business visitor visa.

B-2 Visa for Leisure or Tourism

B-2 Visa for Leisure or Tourism: Foreign nationals who wish to visit the United States for leisure or tourism are normally eligible to receive B-2 visas. B-2 tourist visas are required for citizens of countries that are not included in the Visa Waiver Program. However, citizens of countries included in the Visa Waiver Program may also be required to obtain a B-2 visa if they plan to stay in the United States for longer than 90 days or change status to other immigration categories after entering the country. Persons admitted to the United States under a B-2 visa are not allowed to work or receive any kind of payment while staying in the United States.
B-1/B-2 Visa Extension of Stay

Foreign nationals visiting the United States on a B-1 Business Visa or on a B-2 Tourist Visa are issued a I-94 form by an United States immigration officer upon entry into the country. The I-94 Form is a card which shows the arrival date and location of entry into the United States. It also shows the date by which the foreign national must depart the United States. Travelers on B-1 and B-2 visas are usually allowed to stay in the United States for a period of up to six months, with the possibility of extension for up to six additional months upon approval of the extension application by the USCIS (United States Citizenship and Immigration Services, formerly INS).

Anyone may file for an extension; however there are no guarantees that the application will be approved. The USCIS takes into consideration factors that show your intention of departing the United States at the end of the proposed extension period. The applicant must submit the extension of stay application before the current authorized stay expires. The applicant is also required to provide proper evidence of financial support.

J-1 Exchange Visitor Visa

The United States government issues J-1 visas to individuals who take part in a wide range of exchange visitor programs sponsored by schools, businesses, and a variety of organizations and institutions. These programs are envisioned for business and industrial trainees, scholars, students, international visitors, teachers, research assistants and those on cultural missions. Federal regulations govern the Exchange Visitor and the sponsor. The intent of the program is exchange of knowledge; the assumption is that the international scholar is coming temporarily to the U.S and then will be required to return to their home country for two years before being able to return to the United States.

Foreign nationals meet the criteria for a J-1 exchange visitor visa if they are coming to the United States as a student, scholar, trainee, teacher, professor, research assistant, or international visitor who is participating in a program of study, training research or cultural enrichment as determined by the US Department of State, Bureau of Educational and Cultural Affairs.

J-1 Status

Most visiting faculty and scholars come to the U.S. on a J-1 visa specially designed for international educational and cultural exchange. They come at the invitation of an academic department and FSU serves as the official sponsor. Faculty and scholars are
normally admitted to the U.S. for periods from 3 months to 3 years, with the possibility of extending their stay to a maximum of five years. Any academic department, wishing to invite visiting faculty or scholars to FSU should contact the Office of ADA/EEO Compliance.

**J-1 Filing Fees**

No filing fees are required with the J 1 Visa except when requesting an extension beyond the maximum visitors program.

**K1 and K2 Visa**

The K1 visa enables US Citizens to bring their foreign fiancé to the United States in order to get married.

The K2 visa allows unmarried children (under age 21) of the fiancé to move to the US as well.

The K1 visa is just one single step in a procedure for obtaining permanent residency or green card, based on a marriage to a US Citizen after entry. The steps involved in immigrating to the US via a K1 visa can be generally described as follows:

- The US Citizen files the I-129F petition for the foreign fiancé with the USCIS. The I-129f is filed at a USCIS Service Center in the US (where you file depends on where you live). The petition phase is very straightforward. Approval timelines vary with each Service Center, with the processing times ranging anywhere from one to five or six months.
- After the I-129F has been approved, the petition is sent to the Department of State's National Visa Center (NVC) where it is processed and forwarded to the correct embassy and consulate. The process of sending the approved I-129f from the Service Center (through the NVC) and arriving at the embassy takes about a month. The fiancé has 4 months from the time the I-129F was approved at the Service Center to obtain the K1 Visa at the US Consulate in the foreign country. This time period can be extended by a consular officer if required
- Once you have the K1 Visa it is good for only one entry into the United States within 6 months of the issue date. A K2 Visa holder (child of K1 Visa holder) may enter up to one year after the K1, but a K2 Visa holder may not enter the U.S. prior to the K1.
- Once in the United States, you have 90 days to get married
- Immediately after marriage, you must apply for an Adjustment of Status, Form I-485, to become a permanent resident. You may also apply for an Employment Authorization Document (EAD) to work which is required until your I-485 is approved.
• You may also need "advance parole" if you intent to travel outside the United States and re-enter before getting your green card (I-485 approval).
• If your I-485 is approved prior to two years after you were married you will be issued a "Conditional" Permanent Resident status (green card) which is valid for only two years. If you are interviewed and approved greater than two years after you were married you will get a full normal Permanent Residency with no conditions valid for ten years. The time it takes to approve an I-485 depends on where you live and the nearest local USCIS office's processing timeline.
• If you were given a "conditional permanent residency", after two years from the date you were granted this status, you will have to apply to have the "Conditional" status removed; if approved you will get a full 10 year green card. If you had a full permanent residency status without conditions then this step is not required.
• At a later date you can apply to become an American citizen (naturalization).

Filing Limitations on K Nonimmigrant Petitioners: If you have filed two or more K-1 visa petitions at any time in the past or previously had a K-1 visa petition approved within two years prior to the filing of this petition, you must apply for a waiver. To request a waiver you must submit a written request with the I-129F petition accompanied by documentation of your claim to the waiver.

Whereas the K1/K2 visa process is fairly straightforward, the K3/K4 is not as simple. It is important for the US Citizen to be informed and attentive to detail, because there are several opportunities to make mistakes and omissions which could result in unpleasant surprises. Immigrating to the United States via the K3/K4 is not such an automatic process as is experienced by the K1/K2.

K3 and K4 Visa

The Legal Immigration and Family Equity Act (LIFE Act) was signed into law in 2000. One of the provisions of this legislation was the creation of K3 and K4 non-immigrant visas for spouses or children of US Citizens who are outside the US. The K3/K4 visas were created to allow reunification of families of US Citizens, by allowing the spouse and children to enter the United States as non-immigrants, and filing for Adjustment of Status once inside the United States, rather than waiting for approval from the Consular. The K3 visa is issued to the spouse, the K4 to the minor children. The application process for a K3 and K4 is as follows:

- The US Citizen files an I-130 petition for the foreign spouse to the USCIS.
- USCIS issues a receipt (I-797) acknowledging filing of the I-130 petition.
- The US Citizen files an I-129F petition, using the I-797 receipt as "proof of filing an immigrant petition". All children of the foreign spouse will be listed on this petition. The I-129F is forwarded to the appropriate USCIS Service Center where the underlying I-130 petition is currently pending.
When the petition is approved, it is sent to the Department of State's National Visa Center (NVC) for processing.

USCIS notifies the appropriate Consulate and processing for the K3/K4 non-immigrant visa commences.

An interview with the Consular is required as well as a medical exam, background check, and completion of form I-134; Affidavit of Support.

The K3 spouse and K4 children file the I-485 for Adjustment of Status immediately upon entering the US or when the I-130 petition is approved. The new K visa will be issued for an effective period of 2 years, with multiple entries permitted, and provision to extend the visa beyond 2 years. The State Department has indicated that in K3/K4 cases, that the USCIS will retain the approved I-130 petition. This means if the K3/K4 visa holder wishes to obtain an immigrant visa at a Consulate, they need to notify that Consulate to begin the process, after which the Consulate will request the approved I-130 petition from the USCIS.

H-1B Work Visa for College Educated Professionals

The H-1B visa enables professionals in "specialty occupations" to make a valuable contribution to the American economy. A maximum of 85,000 H-1B visas are issued every year, however Institutions of Higher Education are not subject to this limitation. The H-1B non-immigrant visa may be issued to applicants seeking temporary work in a "specialty occupation" which requires the skills of a professional. "Specialty Occupations" includes e.g., accounting, computer analysts, programmers, database administrators, web designers, engineers, financial analysts, doctors, nurses, scientists, architects and lawyers. The petitions are submitted by FSU’s Office of ADA/EEO Compliance, based on the University’s need for the non-U.S.-resident employee. The applicant must possess a minimum of a bachelor's degree or requisite experience to make up for the lack of a master’s degree. The H-1B visa is issued for up to three years but may be extended for up to a maximum stay of six years. The H1-B visa holder can then secure a lawyer to assist in the petition for permanent residency (Green Card.)

H-4’s (Dependents of H-1B Holders)

Dependents (spouse and unmarried minor children) of H-1B aliens are in H-4 status and their stay is dependent on the status of the H-1B.
TN/TD NAFTA Work Visa

The North American Free Trade Agreement (NAFTA) established a TN non-immigrant visa category for Canadian and Mexican citizens. The TN status enables Mexican or Canadian citizens to be admitted to the U.S. to engage in “business activities at a professional level” in certain fields. TN status may be granted indefinitely, but approved in one-year increments.

The employee must provide proof of eligibility for the TN visa, complete forms, and pay the $50 fee at the port of entry into the United States. Required documentation includes evidence of degrees, references from employers, and a letter of appointment from FSU stating the professional capacity in which the applicant will be employed.

Recruitment Process for Foreign Nationals

In order to ensure compliance with all federal immigration and employment requirements, Frostburg State University has established the following policies and procedures to be followed for University-sponsored immigration petitions. The hiring of foreign nationals must be restricted to full-time regular positions such as the tenure track faculty positions and professional administrative positions. The U.S. Department of Labor regulations require an employer to first attempt to recruit United States workers for a particular position. If, after the employer completes the recruitment efforts, and determines there are no United States workers who are able, willing and qualified, for the position, then a foreign national can be considered for a position at FSU.

If a foreign national is being considered for an interview keep in mind that the process may take longer if you require an in-person interview and the individual is not in the U.S. The foreign national candidate may be required to obtain a visitor visa to enter the U.S., even if only for the interview visit. A U.S. visitor visa may take considerable time to obtain, depending on the location of the U.S. embassy or consulate and appointment schedules.

At this point in the recruitment process it is important to contact the Director of ADA/EEO Compliance to determine the appropriate visa category for the position and to determine if there are any obstacles that may interfere with successful filing of an employment-based visa. For example, if your selected candidate is currently on a J-1 Exchange Visitor visa, he/she may need to obtain a waiver of the two-year foreign residency requirement or return to his/her home country for two years before he/she can begin employment at FSU.

Once the appropriate visa category for the position has been determined, the department head has the option of not extending a job offer to a foreign national candidate if (1) the
A department chooses not to pay any immigration fees or (2) the immigration process will not be completed in time for the required start date.

The Director of ADA/EEO Compliance will also determine the prevailing wage for the position from the U.S. Department of Labor. FSU is required to pay the employee the higher of either the actual wage offered to similarly employed individuals or the prevailing wage. A prevailing wage determination is meant to provide a fair and equitable wage in the field of employment and region of the country.

New Foreign National Employees at FSU

H-1B Status

As soon as an offer of employment has been accepted by a foreign national, the department head should inform the Director of ADA/EEO Compliance. In turn the Director will contact the employee to secure the documentation required for filing the appropriate visa. This can be a long process, currently the processing time for the initial H1-B visa, or H1-B visa extension is approximately four months. An optional premium processing fee of $1000 can be paid with the filing of an I-907 form if it is necessary that the petition be adjudicated by USCIS earlier than four months. If the premium processing service is used a decision by USCIS is made to approve or deny the petition within 15 calendar days.

The Director of ADA/EEO will complete the premium processing form (I-907) if required, along with the I-129 petition to the United States Citizenship and Immigration Service (USCIS.) Also, prior to submitting an H-1B petition to USCIS a Labor Condition Application (LCA) must be filed with the Department of Labor. The LCA certifies that the wage being paid to the employee is the higher of either the actual wage offered to similarly employed individuals or the prevailing wage. A letter of support of the applicant from the Department Chair is also required to be submitted with the petition to USCIS.

An individual cannot self-petition for H-1B status. The H-1B is employer and position specific which means the employee can only work for the employer with an approved H-1B petition for the specific purpose identified in the I-129 petition filed by the employer.

H-1B Filing Fees

The university is required to pay:

- $320 Form I-129 application fee (effective July 30, 2007)
- $500 Anti-fraud fee for new petitions
- $1000 Premium Processing Service (optional fee)
Filing H-1B Visa Petition – Required Documentation

Foreign national’s requesting that a H-1B visa petition be submitted on their behalf will be required to submit the following documentation to the ADA/EEO Compliance Office.

- Copy Form I-94 (Front and Back)
- Copy Certificate of Eligibility for Non-immigrant (F-1) Student
- Passport (Copies of pages which have information on the holder and Visa)
- Employment Authorization Card (EAC)
- Expired passport, to include last US entry (if applicable)
- Social Security Number
- Circuit Court Records regarding name change (if applicable)
- All Post-Secondary Transcript and Degrees
- Resume
- Publications/Presentations

Frostburg State University will request and/or complete the following documentation on behalf of the employee’s request for H-1B1 Visa:

- Letter of Appointment and Salary from FSU President
- Letters of petition for H-1B Visa from the Department Chair or Head
- Form I-129, H Classification Supplement
- Form I-129, H-1B Data
- Collection and Filing Fee Exemption Supplement
- Form ETA 9035 Certified ETA
- I-129 Filing Fee $320.00 (Check made out to USCIS)
- Position Advertising
- Form I-907 USCIS Premium Processing Service (optional)
- Fraud Prevention and Detection Fee $500.00
- Form I-797
- USCIS Form 1-539 (completed for immediate family members)

If an H-4 application for family member(s) is being filed along with the H-1B visa, the fee for this process is $290.00 and is paid for by the employee. The following documentation must be provided to the ADA/EEO Compliance Office.

- Check made out to USCIS for Form 1-539
- Passport (Copies of pages which have information on the holder and Visa)
- Copy of I-94
- Circuit Court Records regarding name change (if applicable)
- Employment Authorization Card (EAC)
- Marriage Certificate in native language with English translation
- Birth Certificates for any Child
Permanent Residency

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. New tenure-track faculty members should begin the consultation process within 24 months from the date of the job offer letter, not the date of hire. The University is committed to facilitating the process of application for permanent residency, the University does not file applications for permanent residency (green card) on behalf of foreign nationals who are hired through an H-1B, nor does this department provide legal advice to foreign nationals on such matters.

Foreign nationals who wish to obtain permanent residency status must use the Attorney under contract by FSU. The Director of ADA/EEO will assist with providing the information that the legal counsel requires. This includes signing the necessary forms.

Special Handling Foreign National Labor Certification (for Teaching Faculty)

This category is used for college and university professors and benefits from a reduced form of labor certification called “Special Handling.” The foreign national’s position must include classroom teaching duties.

The first step in the process of applying for an employment-based Permanent Residence visa is applying for and obtaining an Alien Labor Certification (ALC) through the U.S. Department of Labor. The ALC protects U.S. workers by ensuring that U.S. workers are given a fair chance to apply for the position for which the foreign national has been appointed.

The U.S. Department of Labor provides a less stringent ALC process for university and college teaching faculty positions, referred to as a Special Handling ALC. Applications are filed electronically in the U.S. Department of Labor's Program Electronic Review Management (PERM) system.

Requirements

To qualify for Special Handling ALC processing:

- The ALC application must be filed within 18 months from the date of the job offer letter, not the date of hire. If an ALC application is not filed within this timeframe, a completely new, full-scale candidate search must be conducted before another ALC application may be filed.
- Extensive documentation of the recruitment process (details follow) must be submitted. The date on which the application is filed with the U.S.
Department of Labor's PERM system establishes a “priority date” for the foreign national employee, which will be important later in determining how long the final step of the permanent residence process will take to complete.

Documents Needed

Both the FSU hiring department and the foreign national employee are required to submit documents for Special Handling ALC processing.

- Copy of at least one printed advertisement placed in a national professional journal, which clearly states the position title, duties, and minimum job requirements. The advertisement must include the title page, showing the journal name and publication date, as well as the entire page on which the ad appeared.

Brief description of the recruiting process for the position:

An application minimally included a resume with a list of publications, a statement of research interests, and the names of three references.

- Applications were reviewed and evaluated by a search committee, comprised of five faculty members.
- On the basis of the review, five applicants were invited for on-campus interviews. The interviews included presentation of a general lecture and a research seminar, as well as individual interviews by faculty members.
- Based upon the interviews, a priority ranking was established and sequential offers were prepared.
- Provide a statement of each of the following aspects of the selection process:
  - For each of the final candidates, please identify by a number or name and provide specific examples explaining why each was less qualified for the position than your employee.
  - Provide a short statement with specific examples explaining why your employee was the most qualified for the position.
- Copy of the appointment letter.

Foreign National Employee Documents

- Academic credentials and curriculum vitae
- Current immigration status approval notice
- Copies of passport identity page and visa stamp
- Form I-94
Fees

Lawful Permanent Residence ("green card")

- PERM (Labor Certification Application): Under the DOL's new rules, FSU must bear the costs associated with the preparation and filing of a PERM application with the DOL including, but not limited to the advertising costs and attorney's fees.
- I-140 Immigration Petition for Alien Worker: There is no legal obligation for the employer to pay any costs associated with the preparation and filing of an I-140 with the USCIS.
- I-485 Application to Adjust Status to Permanent Residence: There is no legal obligation for the employer to pay any costs associated with the preparation and filing of an I-485 with the USCIS.

H1B Travel Information

Guidelines

Items needed for reentry to the United States in H-1B status:

- Original I-797 Approval Notice: Please pick up the original from the ADA/EEO Office before traveling. You must return this page to the office after your return along with a copy of both sides of your new I-94 departure record and new visa if any.
- I-94 your "Personal Record" half (left side) of the I-94. This was given to you by FSU when your H-1B approval notice arrived from the USCIS. Put the I-94 (right side) into your passport. It will be taken from you when you leave the U.S. Copy of most recent H-1B petition (Form I-129 with supporting documents). You received a copy of the I-129 with your H-1B approval.
- Valid passport with I-94 Departure Record attachment enclosed
- Current employer's letter stating you position, salary and intent to return to employment at FSU.
- Paycheck stubs from past several months
- H-1B visa: Check your passport to see if you need to obtain an H-1B visa stamp at a U.S. consulate before reentry. Consulates require the I-797 form and a copy of the I-129 Petition. If you had J-1 status in the past, and were subject to the 2-year rule, it is recommended that you bring a copy of the waiver approval notice (I-612).
- If you need to renew or apply for a U.S. entry visa, expect delays. Plan ahead, as this may take longer than in the past. Because most visa applicants are now required to appear for a personal interview, you should expect processing delays.
In addition, "security checks" can delay visa issuance by several weeks or months.

- Carefully review your I-94 departure records when you reenter the U.S. to be sure the inspector has noted the proper status (H-1B) and departure date on your I-94 (end of current H-1B validity date).

- After reentry please forward a good quality copy of your H-1B visa and both sides of your I-94 departure record, showing red entry stamp to the ADA/EEO Office.

Obtaining Maryland Drivers License

Foreign Applicants

Applicants presenting foreign issued identity documents who are applying for their initial Maryland Driver's License or Identification Card must schedule an appointment by calling 1-866-691-2778. Appointments will be scheduled Monday through Friday at one of the following ten regional MVA offices: Baltimore City, Bel Air, Beltsville, Frederick, Gaithersburg, Glen Burnie, Largo, Salisbury, Waldorf or White Oak.

Foreign applicants presenting a valid Employment Authorization Card (I-688A, I-688B, or I-766), or a valid passport with a valid United States visa and valid I-94 (Arrival/Departure Record*), or a valid Permanent Resident Card (I-551), are not required to make an appointment and may visit any full service MVA office, Monday through Friday 8:30 a.m. - 4:30 p.m. or Saturday 8:30 a.m. - 12:00 p.m.

*I-102 (Replacement/Initial Non-Immigrant Arrival/Departure Document) may be substituted for the valid I-94.

Your Maryland Learner's Permit, Driver's License or Identification Card will be mailed to your Maryland address of record. If you present acceptable foreign issued identity documents and proof of residency, in addition to a valid Out-of-State driver's license, your license may be issued at the MVA branch office. For more information...

Foreign/Out-of-Country Documents

Foreign/Out-of-Country documents may be used as a primary/secondary source of identification if translated into English by an interpreter/translator from the MVA Approved Interpreter/Translator Provider Listing, and interpreter/translator from the MVA's State of Maryland Court Registry Interpreter Listing, or by the Embassy of the country where issued. Translations must be on a document prepared by the approved interpreter/translator or on the letterhead of the Embassy of the country of origin, and must contain the typed/printed name, telephone number and signature of the
interpreter/translator. The original document must accompany the English translation.

Photocopies, notarized copies, and documents with alterations or erasures will not be accepted. Faxed copies of translations are not acceptable.