Overview of Hiring Foreign Nationals Webinar

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Phone: (215) 898-4661
E-mail: isss@pobox.upenn.edu
Web: http://global.upenn.edu/isss

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International Student and Scholar Services
Introduction

Overview of different visa types and corresponding positions at Penn

Webinar duration: approximately one hour
Common Immigration Terminology

- Immigrant vs. Nonimmigrant
- Form I-20 (F-1 and F-2)
- DS-2019 (J-1 and J-2)
- I-797 Notice of Action
- Passport
- Visa vs. Status
- I-94 Arrival/Departure Record
  - Stamp, electronic record or paper card
- SEVIS
Key Players

- Prospective employer (Penn)
- Prospective scholar or employee
- Department of Homeland Security
  - USCIS
  - CBP
  - ICE
- Department of State
  - US Consulates and Embassies
  - Bureau of Educational & Cultural Affairs
- Department of Labor
Types of Positions at Penn

- Student jobs
- Postdoctoral Researcher
- Visiting Professor/Researcher
- Faculty
- Staff
- Medical Resident
- Medical Observer or Intern
International Students at Penn

On-Campus Employment

F-1 and J-1 students

- May work on campus up to 20 hours per week while school is in session
- May work on campus more than 20 hours per week during annual vacation and school breaks
- J-1 students must obtain advance written on-campus work authorization from ISSS
International Students After Graduation

- Optional Practical Training (OPT) for F-1 Students
  - Up to 12 months
  - STEM OPT Extension
    - Up to 24 additional months
    - Form I-983 Training Plan completed by Department / PI
    - Requires attestations, reporting, and appropriate wage

Appropriate for: Postdocs, Staff, Medical Residents

International Student and Scholar Services
International Students
After Graduation

- **Academic Training (AT) for J-1 students**
  - Up to 3 years, depending on degree

Appropriate for: **Postdocs, Staff**
Visitors: B-1/B-2 or WB/WT (ESTA)

- Business (B-1 or WB), for Pleasure (B-2 or WT)

- May not receive a salary from a US source for services rendered in US

- May receive honorarium from Penn if:
  - Stay at Penn is no longer than nine days AND
  - Has not received honoraria from more than five institutions or organizations over the last six months.

Appropriate for conference attendees, visiting lecturers, individuals consulting with US business associates, and ...
Visitors: B-1/B-2 or WB/WT (ESTA)

- **Medical Clerkship**
  - for 3rd or 4th year internship as part of medical school program overseas - “elective clerkship”
  - without remuneration from the hospital
  - under supervision and direction of faculty physicians

- **Medical Observer**
  - to observe US medical practices and consult with colleagues on latest techniques
  - no remuneration from a US source
  - no patient care

Consult with ISSS if unsure
J-1 Exchange Visitor (EV) Program

Objective: “...to increase mutual understanding between people of the United States and the people of other countries by means of educational and cultural exchanges...”

- EV’s program objective is for a specific field of research or teaching and may not change

- J-1 categories at Penn: Professor/Researcher (5 yrs), Short-Term Scholar (6 mo’s), Student Intern (1 yr)

Appropriate for non-permanent, non-staff positions such as Visiting Professors/Researchers, Postdocs
J-1 Student Intern

To fulfill the educational objectives for the prospective J-1 Student Intern’s current degree program at his or her home institution overseas.

- Program length: up to 12 months per degree level
- Pursuant to an official Student Intern Placement Agreement
- The prospective J-1 Student Intern has to pursue a degree outside the U.S. and will return afterward
J-1: Other Factors

- Proof of English Proficiency

- May engage in occasional outside lectures or consultations, with advance written permission from ISSS

- J-2 dependents may apply for employment authorization

- Funding may come from various sources: personal, Penn, private organizations, US or home country government

- Department must inform ISSS for funding change, early departure, change worksite
J-1 Mandatory Insurance

- Within 30 days of arrival, ALL J-1 Visiting Scholars and Student Interns and dependents are required to either:
  - Purchase a pre-selected J-1 Insurance Plan from Garnett-Powers. Please note there are two tracks - Postdoc and Visiting Scholar
  - Or waive out of the coverage requirement by submitting evidence of comparable or better insurance to Garnett-Powers.

- For questions regarding coverage or which plan is more appropriate, contact Garnett-Powers directly at 1-800-441-3719 or UPENNNSBP@Garnett-Powers.com

- Failure to comply with insurance requirement will result in loss of visa status
J-1/J-2: 212(e)- Two Year Home Country Physical Presence Requirement

- Some Js are required to return to home country for two years based on Skills List, government funding, or medical training.

- Cannot obtain an H, L, K or immigrant visa until requirement is fulfilled or waived by the Department of State.

- Once a J-1 receives a “DOS Waiver Recommendation” letter, there can be no further program extensions or transfers.
J-1 Professors and Research Scholars: Bars...

- 12-Month Bar
- 24-Month Bar
  - not the same as the Two Year Home Country Physical Presence Requirement

If subject, consult ISSS to see whether the O-1 or H-1B is an option
H-1B Specialty Workers

- Temporary professional worker category for “specialty occupations” that require a minimum of a bachelor’s degree or higher in the specific specialty/field

- The H-1B employee must meet the minimum qualifications for the position at the time ISSS files the H-1B petition

- Postdoc waiver

- Allows dual-intent

Appropriate for Staff, tenure-track Faculty
HR Approval for Foreign-National Staff

- Please allow extra time for Staff positions.

- In order to comply with University HR Policy 108.1, ISSS will require approval from HR before proceeding with the visa application.

- Does not apply to Faculty.
H-1B: Process Overview

- **DOL Wage Analysis to determine H-1B Required Wage**
  - Prevailing vs. Actual Wage
  - Must pay higher of the two
  - +/- 60 days if prevailing wage request sent to DOL

- **Labor Condition Application**
  - Notification to employees at worksite/to H-1B employee
  - 7 business days at DOL
  - Multiple work sites

- File petition with USCIS - employee must meet minimum qualifications at the time of filing
H-1B: Key Points

- Total of six years unless PR in process
- Changes in conditions of employment may require amendment
- The Penn department must pay return cost of transportation abroad if the employee is dismissed for any reason before the end of the H-1b approval.
- H-1B position requirements must be consistent with HR standards
- Actual wage analysis must be according to DOL standards
- Option of premium processing
Types of H-1B Applications

- **Consular**: Obtains H-1B visa at US consulate abroad

- **Change of Status**: Change of non-immigrant status in the US

- **Extension**: Petition filed before H-1B expires.
  - Employment continues (240 days) while pending

- **Amendment**: Required to be filed in advance of any material changes to approved H-1B position.

- **H-1B change of employer (“Portability”)**: Employee in current H-1B status may begin at Penn once I-797 receipt notice arrives

- **Concurrent H-1B employment**
  - Each employer must have its own H-1B petition approved by USCIS
FDNS Site Visits

- Office of Fraud Detection and National Security (FDNS) within USCIS
- Not an audit or investigation
- Administrative visit for verification of facts as submitted to USCIS
- Could be phone, email or in-person
- Penn protocol - Call ISSS first

International Student and Scholar Services
E-3 Australian Treaty Workers

- Available to citizens of Australia;
- Same qualifications as H-1B but usually just requires an LCA for processing;
- Up to two year increments;
- Dependents of E-3 may apply for employment authorization with USCIS;
- Appropriate for staff, visiting faculty/researcher but not tenure-track faculty
**TN: NAFTA Professionals**

- For **Canadian and Mexican citizens** to the US to engage in professional business activities on a **temporary basis**
- **Occupation vs. Job Title**
  - Occupation on Designated List
- Approval given at the border or by USCIS
- Approved for up to three years at a time and renewable indefinitely, but be careful of immigrant intent
- TNs do not need to come through ISSS for processing. Follow instructions at [http://global.upenn.edu/isss/tn](http://global.upenn.edu/isss/tn)

Appropriate for temporary **staff, visiting faculty/researcher** but not **tenure-track faculty**

*International Student and Scholar Services*
Outside Legal Counsel Program

- Two law firms to handle
  - O-1: Person of Extraordinary Ability
  - Employment-based PR applications
    - Standard labor certification cases
    - Outstanding Professor/Researcher cases
    - Other PR categories

- Program policies, fees etc. per OGC & ISSS

- Submit Request form to ISSS to begin process
O-1: Person of Extraordinary Ability

The O-1 nonimmigrant category is for the employment of foreign nationals who have achieved and sustained national or international acclaim for extraordinary ability in the sciences, arts, education, business or athletics or FNs who have demonstrated a record of extraordinary achievement in the motion picture and television industries.

- Initial period of stay: up to 3 years with one-year extensions
- Possible option for foreign nationals subject to 212(e) 2-year home residence requirement
- Employer is responsible for return cost of transportation abroad if O-1 employee is dismissed before O-1 expires

Appropriate for staff, Faculty, physician Faculty
Lawful Permanent Residency

A Lawful Permanent Resident (LPR) is a person who has been lawfully accorded the privilege of permanently residing in the US as an immigrant. Aka: legal immigrant, permanent resident, resident, green card holder...

- PR Initial Review Form to ISSS to start the process
  - Never too early to begin the process: no later than Year 4-4.5 on H-1B
  - Not all Penn positions may qualify
  - Case will be processed by ISSS (teaching Faculty) or outside counsel

- Steps may include
  - Permanent Labor Certification (DOL)
  - I-140 Immigrant Petition (USCIS)
  - I-485 Adjustment of Status (USCIS) within the US; or Immigrant Visa abroad
  - ISSS will sign all PR-related government forms

Appropriate for tenured-track Faculty, and permanent staff (must be granted Policy 119 exception from HR)

International Student and Scholar Services
Reminder: Changes/Terminations/Resignations

- Significant implications for foreign national’s immigration status now and in the future
- Employer’s responsibilities and penalties for violations
- Consult with ISSS prior to
  - terminating employment of a foreign national
  - Change in conditions of stay
- Notify ISSS even in the case of voluntary resignations/departures
- Send a copy of the resignation/termination notice to ISSS
- H-1B and J-1 verification process
Application Timeline Overview

- **F-1 OPT**: obtain OPT recommendation I-20 (3-5 business days); USCIS adjudication (2-3 months)
- **J-1 Scholar**: obtain DS-2019 (3 weeks ISSS processing time)
- **H-1B**: 6-8 weeks ISSS and DOL processing time, longer if prevailing wage obtained from DOL; USCIS adjudication (6-8 months or 15 days with premium processing)
- **E-3**: 6-8 weeks ISSS and DOL processing time;
- **TN**: not processed at ISSS unless Change of Status
- **O-1**: outside counsel processing time varies – allow 6-8 months; USCIS adjudication 6-8 months or 15 days with premium processing
- **PR**: processing time varies depending on which path to PR – may take as long as two years
  - **Change of status**: USCIS adjudication (2 - 10 months)
  - **Visa stamp**: normally 1-2 weeks, but may be much longer if undergoing administrative processing
On the horizon

- New regulations for employment based-visas effective January 17, 2017

- Uncertainty about what changes the new administration will implement
Questions?

Thank you!