The employment of international faculty and staff contributes to the cultural diversity at Georgia College. International employees provide our students with a cross-cultural learning experience that will allow them to successfully participate in a global civilization.
## Table of Contents

I. **INTRODUCTION** .......................................................... 1  
   1.1 Types of Non-Immigrant Visa Status .......................................................... 2  
      1.1.1 H-1B Status .................................................................................. 2  
      1.1.2 TN Status .................................................................................... 2  
      1.1.3 O-1 Status .................................................................................... 2  
      1.1.4 F and J Status ............................................................................... 2  
   1.2 Immigrant Visa Status ................................................................................. 2  
      1.2.1 Permanent Residency ..................................................................... 2  
   1.3 University Sponsorship of International Employees ...................................... 3  

II. **H-1B VISA** ....................................................................... 4  
    2.0.1 Overview ....................................................................................... 4  
    2.1 Georgia College Process in Obtaining an H-1B Visa ................................. 5  
       2.1.1 Department ............................................................................... 5  
       2.1.2 Employee ................................................................................... 5  
       2.1.3 Dean ......................................................................................... 6  
       2.1.4 Academic Affairs ...................................................................... 6  
    2.2 The H-1B Visa Petition Process ................................................................. 7  
       2.2.1 Prevailing Wage v. Actual Wage ..................................................... 7  
          2.2.1.1 Labor Certification ................................................................. 7  
          2.2.1.2 Export Controls Attestation .................................................... 7  
       2.2.2 Length of Stay in H-1B Status ......................................................... 9  
          2.2.2.1 H4 does NOT count towards the six year H-1B Limit ............... 9  
          2.2.2.2 Extensions beyond 6 years ..................................................... 10  
    2.3 Travelling with an H-1B Visa ................................................................. 11  
       2.3.1 Obtaining an H-1B Visa Stamp ..................................................... 11  
       2.3.2 Traveling to Canada, Mexico for less than thirty days .................... 11  
       2.3.3 Travel while H-1B extension of stay is pending ............................. 12  
    2.4 Termination of H-1B Employees ............................................................. 13  
       2.4.1 H-1B Employer Obligations .......................................................... 13  
          2.4.1.1 Liability for Reasonable Costs of Return Transportation .......... 13  
          2.4.1.2 USCIS Notification of Termination ......................................... 13  
          2.4.1.3 Department of Labor Implications ......................................... 14  
       2.4.2 Consequences for the H-1B Employee ............................................ 15  
          2.4.2.1 Maintenance of Status ......................................................... 15  
          2.4.2.2 Difficulty in Taking Advantage of the Portability Rules .......... 15  
    2.5 Conclusion of H-1B Visas ...................................................................... 16  

III. **TN STATUS** ............................................................... 17  

IV. **O-1 STATUS** ............................................................... 18  

V. **PERMANENT RESIDENCY** .............................................. 19  
   5.0.1 Overview ....................................................................................... 19  
   5.1 Georgia College Process to Permanent Residency .................................... 20  
      5.1.1 Department ............................................................................... 20  
      5.1.2 Employee ............................................................................... 20
5.1.3 Dean ................................................................................................................. 21
5.1.4 Academic Affairs .............................................................................................. 21
5.2 Documentation ........................................................................................................ 22
5.2.1 Overall Criteria for Permanent Residency .......................................................... 22
5.3 Overview of Sponsorship Categories .................................................................... 23
5.3.1 Outstanding Professor/Researcher (EB-1 category) ............................................ 23
5.3.2 Department of Labor PERM Processing for individuals with teaching responsibilities (EB-2 category) .............................................................................. 23
5.3.3 Department of Labor PERM Processing for positions that do not have teaching responsibilities (EB-2 or EB-3 category) ......................................................... 24
5.4 Work Eligibility and Timeframe .............................................................................. 25
5.4.1 Outstanding Professor or Researcher (EB-1) ......................................................... 25
5.4.2 PERM cases NOT requiring re-advertising and re-recruitment (EB-2 for teaching positions) ................................................................................................. 25
5.4.3 PERM cases requiring re-advertising and re-recruitment (EB-2 and EB-3) ........................................................................................................................... 26
5.5 The Permanent Residency Petition Process ............................................................ 27
5.5.1 Prevailing Wage determination .......................................................................... 27
5.5.2 Advertising and Recruitment ............................................................................. 27
5.5.3 Basic Recruitment Steps for Professional Occupation ........................................ 28
5.5.3.1 Optional Special Recruitment for College and University Teachers ............ 29
5.5.4 Labor Certification ............................................................................................... 29
5.5.4.1 Criteria for Labor Certification ........................................................................ 30
5.5.4.2 Supporting documents for Labor Certification .................................................. 30
5.5.5 Filing of I-140 Visa Petition ................................................................................ 31
5.5.6 Filing I-485 Petition to Adjust Status .................................................................. 31

VI. FEES ....................................................................................................................... 32
VII. GLOSSARY ............................................................................................................. 33
I. INTRODUCTION

Note: All directives listed in this manual are in regards to the Division of Academic Affairs. Should any other division require immigration services, please contact the Office of Legal Affairs for access into the Immigration Database.

This is a guide to provide you with basic information on the common categories of employment for international faculty and staff at Georgia College & State University (GC). The Office of Legal Affairs (OLA) serves as the university’s liaison with federal agencies regarding employment-related immigration matters. It is our commitment to the university administrators, faculty, and staff to provide a more centralized immigration and visa-sponsorship service.

Our primary immigration activities center around:

- Service and support of Georgia College sponsored non-immigrant visas (primarily H-1B) for full-time faculty and professional staff;
- Service and support of GC sponsored permanent residency;
- Research in support of HR for employment eligibility issues;
- Coordination with the Budget Office in regard to residency status analysis for tax purposes; and
- Evaluation and support of non-immigrant employee issues in coordination with Human Resources, Academic Affairs, and Budget Office.

As a part of Georgia College’s policy to consider all applicants for employment, the university will assist the international employee in obtaining proper work authorization. It is the university’s policy to ONLY employ internationals in full-time faculty and professional staff positions. However, the university is under no obligation to do so. Georgia College will only pay the filing fees associated with each petition. In some cases, expedited processing is needed; and in such instances, the university may also pay a premium processing fee associated with the visa petition. This is only at the discretion of the Provost¹; all other fees are the responsibility of the international employee.

The international employee must also use the same immigration attorney that represents Georgia College. This attorney is approved by Georgia’s Attorney General’s office to assist the University System of Georgia and affiliated institutions on all immigration matters². All GC employment-sponsored petitions must originate with the Office of Legal Affairs at Georgia College. Contact the OLA at visas@gcsu.edu for further information, specific questions, and to determine eligibility.

1.1 Types of Non-Immigrant Visa Status

1.1.1 H-1B Status
This category is for the temporary employment of foreign nationals in a specialty occupation category. It is also the most common work visa found in higher education. The position must require, at minimum, a bachelor’s degree. In addition, the international employee must meet the minimum qualifications for the position. The international employee must be paid the higher wage between the prevailing wage and the actual wage that GC will pay to all other similarly situated employees in the same specified employment position. The position must be approved by the Department of Labor through the filing of a Labor Condition Application.

It is the university’s policy to ONLY employ internationals in full-time faculty and professional staff positions.

1.1.2 TN Status
This non-immigrant status was created as part of the North American Free Trade Agreement (NAFTA) for individuals from Canada or Mexico employed in specific fields. Persons who qualify may apply at the border or inside the United States. The employment must be temporary in nature and must be found on a list of authorized employment fields published by the US Department of State.

1.1.3 O-1 Status
This category is specifically for the employment of professionals with extraordinary ability. To qualify, the international employee must be in the top 3-5% of his/her field of specialty. This is a difficult standard to meet. The O-1 is valid for up to three years initially but then may be renewed only one year at a time.

1.1.4 F and J Status
All F-status and J-status visas are processed in the International Education Center. Please contact Dr. Dwight Call or Ms. Libby Davis at 478-445-4789 for more information.

1.2 Immigrant Visa Status

1.2.1 Permanent Residency
All full-time tenure or tenure-track faculty are eligible for permanent residency sponsorship by Georgia College. The PR sponsorship must be recommended by the department chair and dean, with final university approval granted by the provost.
1.3 University Sponsorship of International Employees

It is imperative that the Office of Legal Affairs (OLA) is notified once an international faculty or staff accepts a position with Georgia College & State University. S/he cannot begin working for Georgia College until the appropriate application is filed (and approved depending on the type of visa held when hired). If a prospective employee does not have proper work authorization on the date that s/he is scheduled to begin employment, s/he cannot begin work. In some circumstances, this applies even where an appropriate application for work authorization is pending. Failure to do so will be a violation of the Immigration Reform and Control Act and could subject Georgia College to civil monetary penalties ranging between $1,000 to $35,000\(^3\) and/or other sanctions. These sanctions could include Georgia College losing the ability to hire international faculty and staff for a specified amount of time or permanently, the termination of the international employee found to be in violation of not having proper work authorization, and up to five years imprisonment\(^4\).

It is the university’s policy to ONLY employ internationals in full-time faculty and professional staff positions.

If the prospective employee has an existing H-1B visa, Georgia College must petition for their H-1B to be transferred. The prospective employee cannot begin work until the receipt notice for the petition has arrived at Georgia College.

If the employee has an OPT card, s/he can work up to the end of the time specified on the card. The OPT cards are usually granted for one year. An H-1B petition will have to be filed prior to the expiration of the OPT card. Once the OPT card expires and the H-1B petition has not been approved, the employee must be placed on leave without pay until the petition has been approved.

If the employee has an F-1 visa, the application for the H-1B visa must be filed AND approved BEFORE s/he can start work for Georgia College.


II. H-1B VISA

2.0.1 Overview

The H-1B visa is the most common work visa found in higher education and must be sponsored by Georgia College. This visa is granted for an initial period of three (3) years and can be renewed for an additional three (3) years with a maximum allowance of six (6) years. After six years, if the international employee has not been approved for permanent residency, s/he must leave and reside outside the US for one year to be eligible for a second H-1B visa; or the international employee can change to a different visa status.

The H-1B is a “specialty occupation” category that most colleges and universities use to employ international residents. A ‘specialty occupation' can be any occupation as long as it meets all of the requirements listed in the statutory definition of the Immigration and Nationality Act (INA) and the Department of Labor (DOL) regulations. The Department of Labor places more emphasis on the discipline of the degree that meets the regulations rather than just a ‘bachelor’s degree or higher’. The United States Citizenship and Immigration Services (USCIS) requires Georgia College to prove that both the position and the new faculty member meet all criteria under the definition of ‘specialty occupation’. The procedures to filing H-1B visa petitions are:

- Obtain Prevailing Wage determination from the Department of Labor;
- File the Labor Condition Application (ETA 9035) with the Department of Labor;
- Complete the I-129 and all relevant supplemental information pages; and
- Submit all portions of the I-129 form, a copy of the ETA 9035 approval, and supporting documents to USCIS.

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5 For the statutory definition of specialty occupation, please see the glossary on page 35.
2.1 Georgia College Process in Obtaining an H-1B Visa

The university process in obtaining an H-1B visa is as follows:

2.1.1 Department
Any department wishing to sponsor an international employee must:

1. Contact the Office of Legal Affairs immediately after the employment offer has been accepted to begin the immigration process;
2. The department should understand there is no guarantee a visa will be granted to the international employee;
3. The department chairperson (or designee) must complete the appropriate application (provided to them by the OLA) and upload ALL documents to the application and submit—this includes the sponsorship request letter.
   a. The application can be found at: http://immigration.gcsu.edu/department-h1b-application; or
   b. The link to the application can be provided to them by the Office of Legal Affairs.

Please Note:
- The process will not begin until the requesting department submits the sponsorship application.
- The Office of Legal Affairs will not accept any documents that are not transmitted via the application process unless the OLA has requested otherwise.

2.1.2 Employee
Once the OLA has received the completed departmental application, the international employee will be sent a link via email to complete the Employee Visa Application. The international employee must:

1. Complete the visa application and upload ALL REQUESTED DOCUMENTS to the application and submit;
2. The application MUST be completed BY the international employee.
   a. The application can be found at: http://immigration.gcsu.edu/employee-h-1b-application; or
   b. The link to the application can be provided to them by the Office of Legal Affairs.
2.1.3 Dean
After the requesting department has completed and submitted the application, this includes all requested documents including the sponsorship letter, the Office of Legal Affairs will send the appropriate dean an email advising of the request with directions on submitting the College sponsorship request. This email will include:

- The departmental sponsorship letter;
- A link to the Immigration Database with an explanation to locating the letter templates and where to go to upload the sponsorship letter.
  - The Immigration Database can be found at: [http://immigration.gcsu.edu/](http://immigration.gcsu.edu/).

The dean (or designee) should download the appropriate letter and edit accordingly, print on university letterhead and sign. The letter should be converted into an acceptable electronic format, uploaded and submitted via the link indicating Letter to Provost.

2.1.4 Academic Affairs
Upon receipt of the sponsorship letter from the dean, the OLA will send an email to the provost, associate provost, and one staff member in the Office of Academic Affairs. This email will include the following:

- The departmental sponsorship letter;
- The dean’s sponsorship letter; and
- A link for Academic Affairs to submit the letter containing university approval.

The designated staff member in Academic Affairs should download all sponsorship letters and submit to the provost for approval. Once the provost issues university approval, the document containing written approval should be converted into an electronic format and uploaded to the link provided by the Office of Legal Affairs. This link can also be found at: [http://immigration.gcsu.edu/upload-templates](http://immigration.gcsu.edu/upload-templates).
2.2 The H-1B Visa Petition Process

The basic order in filing the H-1B petition is as follows:

2.2.1 Prevailing Wage v. Actual Wage
As the first official step in the H-1B petition process, the Office of Legal Affairs must conduct a prevailing wage study for the job position. GC is required to pay the higher of either the prevailing wage or the actual intended wage. A prevailing wage determination can be obtained from the National Prevailing Wage Center by completing a form which asks for the responsibilities, skills, experience, as well as other factors required for the job. This information will be used in determining the federal occupational classification into which the position fits. Please note that the title of the position alone may not determine its federal occupational classification.

An analyst at the National Prevailing Wage Center will refer to salary surveys on hand and match the job description with their surveys and determine the salary that is believed to be an accurate reflection within the industry. When the OLA receives the prevailing wage, the two wages will be compared to determine which wage is to be paid. The actual wage is the wage offered to similarly situated employees at GC. For staff employees, OLA will ensure that the offered salary fully complies with GC’s established classification and compensation policy. For faculty employees, the OLA will complete an Actual Wage Determination form which certifies that the H-1B worker’s salary falls within the range of salaries currently paid to individuals with the same job title.

2.2.1.1 Labor Certification
Once the prevailing wage is determined, the OLA prepares the Labor Condition Application (LCA). The LCA contains basic information about Georgia College. It also contains information regarding the prevailing wage determination and the salary offered to the international employee. Additionally, there are four attestations which Georgia College is required to make:

1. GC promises to pay the higher of the two wages;
2. The employment of the foreign worker will not harm the working conditions of similarly employed individuals;
3. There is currently no strike in progress; and
4. Notice of the filing of the LCA was provided to HR and the requesting department of the international employee at GC.

Pursuant to federal regulations, notice of an LCA filing must be posted on or before the LCA is submitted to the Department of Labor. These notices are posted in both Human Resources and the hiring department for a minimum of ten consecutive business days.

2.2.1.2 Export Controls Attestation
The cross-border dissemination of equipment, materials, technology, software or information in the United States is regulated by a system of export controls. The U.S. system of export controls
consists of a list of objects and information that cannot be exported to certain countries without a license.

Pursuant to federal law, an export includes more than just the actual shipment of covered items or technology. The release of controlled technology or technical data, physically or verbally, to any foreign person in the United States (even by an employer) is deemed to be an export to that person's country of nationality. This concept is known as the deemed export rule, and has a direct impact on the hiring of foreign nationals in the United States.

United States Citizen and Immigration Services (USCIS) now requires all institutions petitioning for a non-immigrant foreign worker (H-1B) to certify that it has:

1. Reviewed the applicable federal regulations regarding export controls; and
2. Determined whether the worker will be exposed to controlled technology. If the foreign employee will be exposed to such technology, the employer is required to obtain a U.S. Government export license to release that controlled technology or technical data to the employment visa beneficiary. If an export license is required, then the company or other entity must further certify to USCIS that it will not release or otherwise provide access to controlled technology or technical data to the beneficiary until it has received the required authorization to do so.

As part of the H-1B petition process, GC is required to fill out and sign an attestation that the international employee will not be exposed to controlled technology or, if he/she will, a proper federal license has been obtained

2.2.1.3 Submit Petition
Once these steps are completed, the OLA can submit the visa petition. The USCIS form that is used for an H-1B petition is the I-129 and H Supplement. Additional supporting documents must also be prepared and submitted along with these forms. One of the key supporting documents is a letter from the petitioning employer describing the position offered as well as terms of employment and detailing how it is considered to be a specialty occupation. The letter also explains how the foreign worker is uniquely qualified to fill this position given his/her background, education, and skills.

Other documents to include in an H-1B petition are diplomas, transcripts and licenses, all of which are designed to show that the international employee has the requisite education and experience to perform the responsibilities required for the job. Departments and beneficiaries of the petitions are responsible for obtaining appropriate documentation and providing the same to the OLA for inclusion in the petition.

The H-1B petitioner (GC) takes these supporting documents, the I-129 form and H Supplement, the certified LCA, and the appropriate filing fee and sends it to an USCIS Service Center. Upon receipt of the H-1B petition package, the Service Center will send GC a Notice of Receipt indicating their receipt of the petition and include an approximate processing time. Final approval of the petition is received via a Notice of Approval (I-797) from the USCIS which details the effective dates of the H-1B status.
PLEASE NOTE:

- Any substantial changes in the H-1B’s employment at GC (such as new location, different duties, change in title, change in source or amount of salary, etc.) that occur after the H-1B is approved require immediate notification to HR and the Office of Legal Affairs. USCIS regulations require the employer to notify USCIS of such changes. In some cases, a new LCA will have to be filed with the Department of Labor to maintain legal status.
- H-1B visa holders are considered — resident aliens for tax purposes and are subject to FICA (Social Security and Medicare withholding) and therefore are eligible for the same tax rates, exemptions and deductions as US citizens. Specific rules and filing requirements may apply.

2.2.2 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.

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 visa period while the extension is pending. If the extension of status is not granted, however, employment of the international employee must cease immediately.

2.2.2.1 H4 does NOT count towards the six year H-1B Limit

Dated December 5, 2006, the Associate Director of Domestic Operations for USCIS issued an Interoffice Memorandum to all Regional Directors of USCIS. This memorandum provided guidance on the following two important issues:

- Time spent as an H-4 and L-2 dependent does not count against the maximum allowable periods of stay available to principals in H-1B and L-1 status;
- H-1B aliens, who qualify under AC21 need not be in H-1B status when requesting an additional period of stay beyond the six year maximum;

USCIS has now clarified that any time spent in H-4 status will not count against the six-year maximum period of admission applicable to H-1B aliens. Thus, an alien who was previously an H-4 dependent and subsequently becomes an H-1B principal will be entitled to the maximum period of stay applicable to the classification. This is a direct reversal of earlier USCIS policy. This means that an alien in H-4 status will now be entitled to a full six-year period in H-1B status. Conversely, an H-1B principal who subsequently converts H-4 status may remain in the derivative status for as long as the principal alien spouse maintains that principal status.

Please note that you may not work for GC while under an H-4 or L-2 visa status. Whether you can work at all anywhere else will need to be determined by you personally and, if you wish, in consultation with your own legal counsel.
2.2.2.2 *Extensions beyond 6 years*

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. Additionally, the USCIS memorandum indicates that those aliens who are eligible for a 7th year extension may be granted an extension of stay regardless of whether they are currently in the United States and regardless of whether they currently hold H-1B status.

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 due to the unavailability of visa numbers. This provision allows those individuals from China and India to continue renewing their H-1B status while they wait for their EB priority dates to become current.
2.3 Travelling with an H-1B Visa

If you are making a trip outside the United States, 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 GC confirming current employment in the position described in the H-1B petition; and
- Valid H-1B visa stamp in your passport. 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.

Any international employee planning to travel outside the United States MUST notify the OLA at least two weeks PRIOR to the date of travel.

2.3.1 Obtaining an H-1B Visa Stamp

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 make an application with a U.S. Embassy or Consulate outside of the U.S. to obtain an H-1B visa for re-entry. 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 1-129 (petition for H-1B submitted to USCIS on your behalf);
- Letter from your department confirming employment and that you are expected to return to the U.S. to resume the terms of your contract;
- Original waiver of the two year home residency requirement (if you were previously in J-1 visa status and received a waiver); and
- Valid passport (valid 6 months into the future).

Please contact the specific U.S. Consulate or Embassy where you plan to apply for other requirements, including photos and fees. Also, note that some Consulates and Embassies have recently changed to an appointment system. Please confirm application procedures prior to your trip.

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 involving a transfer of H-1B status between employers or extension of H-1B status are necessarily in PIMS and this can cause delays in obtaining visa issuance. GC faculty and staff are strongly encouraged to schedule appointments with U.S. Consulates or Embassies to request visa issuance with sufficient time to accommodate any delays in processing prior to a planned re-entry into the U.S.

2.3.2 Traveling to Canada, Mexico for less than thirty days

If you have an expired H-1B visa stamp or if you have an expired U.S. non-immigrant visa of any other type (e.g. B, F, J) and you have a valid 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 to you, 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 for your current position) and a letter from GC confirming current employment in the position described in the H-1B petition.

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

A non-immigrant who is changing from one non-immigrant category to another (OPT to H-1B, for example) is considered to be changing status. Traveling while changing status can have important consequences. A non-immigrant that 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 alien 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 alien 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, 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 the alien's departure. In that case, the alien would either have to exit the United States with the approval notice, obtain an H-1B visa and then reenter in H-1B status, or have GC file a new Form I-129 requesting a change of status once more. The latter course of action could be difficult, as immigration inspectors may infer preconceived intent on the part of the alien.

2.3.3 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 application for extension of stay.

Although an application for extension of stay is not considered abandoned if the alien departs while the application is pending, when the alien needs to re-enter the U.S., he or she still needs 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 alien 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 allowed. If the alien could not avoid traveling abroad during this period of time, he or she will have to stay abroad while awaiting the H-1B extension approval in order to be able to apply for a new visa or be readmitted to the United States in H-1B status.
2.4 Termination of H-1B Employees

It is important for H-1B employers to be aware of the obligations and responsibilities that arise once an H-1B employee is terminated. The key is to maintain careful documentary records when facing this situation. Additionally, there are issues that arise for the terminated employee. Please contact the Office of Legal Affairs if your department is terminating the employment of an H-1B worker.

2.4.1 H-1B Employer Obligations

2.4.1.1 Liability for Reasonable Costs of Return Transportation
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.

Immigration statutes and regulations suggest that Georgia College’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 may file a complaint with United States Citizenship and Immigration Services (USCIS). USCIS policy regarding enforcement of this obligation, however, is unclear, and USCIS lacks statutory authority and a regulatory mechanism to enforce this obligation.

Employers should be aware that the statute does not impose an obligation to provide the costs of return transportation to an employee who elects not to depart the United States; however, the Department of Labor considers the payment of these costs to be a normal incident of a bona fide termination.

Employers may wish to provide terminated H-1B employees with a sum approximating the employee’s reasonable return costs and obtain a release from the employee. Alternatively, the employer may be able to satisfy the return transportation requirement by offering to provide a ticket for the employee within a reasonable period after the date of termination through the employer’s travel agent. This approach would provide evidence that the employer made a good-faith effort to satisfy its obligation, while avoiding a windfall to an employee who elects to remain in the United States.

A terminated employee may seek to enforce the employer’s obligation in state court; however, it is unclear whether such a suit could succeed.

Employers should retain records of compliance with this obligation.

2.4.1.2 USCIS Notification of Termination
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 constitutes a material change. Employers may satisfy this notification obligation by sending a letter explaining the change or termination to the USCIS office that approved the petition.

Employers should be aware that there is no sanction provided in the USCIS regulations for failing to make timely notification of an H-1B worker’s termination (but see the discussion of DOL implications below).

After receipt of a letter from an H-1B employer indicating that the H-1B employee is no longer employed by the employer, USCIS will respond with a notice revoking that employee’s H-1B petition.

The eventual revocation of the H-1B petition may cause a dilemma for an H-1B employee, who may have remained in the United States to seek other employment, as discussed below.

Employers should consider informing terminated employees of the employer’s obligation to notify USCIS of the termination and of the eventual revocation of the employee’s H-1B petition that will result.

Employers should retain records of compliance with this obligation.

2.4.1.3 Department of Labor Implications
Employers should be aware that the Department of Labor (DOL) has issued regulations preventing the benching of H-1B workers that is, underpaying or not paying an employee who is engaged in a non-revenue producing matter for the employer. These regulations impose a requirement that employees in nonproductive status or otherwise temporarily laid off due to the decision of the employer continue to receive their normal wages. This requirement ceases once there is a bona fide termination of employment.

DOL regulations tie the obligation to pay an employee until bona fide termination to the obligation to inform USCIS of an H-1B employee’s termination. The DOL’s enforcement position has been that any evidence of a bona fide termination, such as written notice to the employee, will be sufficient to end the employer’s wage obligation. A recent decision of the DOL’s Administrative Review Board, however, held that an employer’s obligation to pay the offered salary continues up until the date the employer sends notice of termination to USCIS.

While USCIS’s position is that an H-1B petition is valid until revoked, so that a terminated H-1B employee whose petition has not been revoked could later begin work for the same employer immediately and would not need a new H-1B petition, the Department of Labor’s position is that failing to file a new petition means no bona fide termination occurred, so that the employer is liable for wages during the entire period between the termination and re-hire.

Employers should maintain careful records of an H-1B employee’s termination, and immediately notify USCIS of the termination, in the event that the Department of Labor questions when the employee actually was terminated.
2.4.2 Consequences for the H-1B Employee

2.4.2.1 Maintenance of Status
Contrary to popular belief, there is no 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.

USCIS policy is that periods during which an H-1B employee receives severance payments, or remains on the employer’s payroll without reporting for work, are not periods of valid status for an H-1B nonimmigrant.

Technically, H-1B employees who remain in the United States after termination of their H-1B employment without changing their status are in violation of their status, and persons in violation of their status are not allowed to change, amend or extend their status. In deciding whether to approve a change, amendment or extension of status for any out-of-status nonimmigrant, however, USCIS may 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. The longer the time out of status, the less likely USCIS will be to approve the change, extension or amendment of status. If the out of status period is very short (10 days or less) a change, extension or amendment of status may be approved. USCIS offices, however, have increasingly refused to exercise discretion in favor of laid-off H-1B workers, unless the gap in status is very short.

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 non-immigrant status, those plans should be implemented as quickly as possible.

2.4.2.2 Difficulty in Taking Advantage of the Portability Rules
The portability rules allow an individual in H-1B status to begin work for a new H-1B employer as soon as the new employer files a non-frivolous petition with USCIS to extend and amend the H-1B employee’s status to reflect the new employer, if certain conditions are met. One condition is that the new petition must be filed before the date of expiration of the period of stay.

USCIS has not made clear when the expiration of the period of stay occurs, though the same language has been interpreted in other contexts to refer only to the expiration date of the non-immigrant’s Form I-94, rather than to when the non-immigrant fails to maintain status.

The dilemma for the terminated H-1B employee is that, if the period of stay expires on the last day of employment, the employee is left with little or no time to coordinate the filing of a new petition by a new employer. While the legacy INS indicated it would propose a grace period to allow terminated H-1B workers to take advantage of the portability rules for a particular period of time (such as 60 days), there has been little activity from the Department of Homeland Security on the issue so far.
2.5 Conclusion of H-1B Visas

There are many issues to consider regarding the termination of H-1B employees. Each individual termination will present unique circumstances that may require more detailed analysis. As individual terminations are carried out, both employers and employees should keep these general issues and challenges in mind and should consult with immigration counsel for an individual determination of their options.

Please notify the Office of Legal Affairs 30 Days PRIOR to employee termination:

Office of Legal Affairs
Campus Box 41
305 Parks Hall
Milledgeville, GA 31061
Phone: (478)445-2037
Fax: (478) 445-2049
visas@gcsu.edu
III. TN STATUS

The TN (Trade NAFTA) was developed as a condition of the North American Free Trade Agreement for Canadian and Mexican citizens. This provided these internationals the ability to enter into the US for professional business purposes on a temporary basis. This category allows individuals admission for:

- Working for a US employer as a professional; or
- Working for a foreign employer (including even a non-Canadian or non-Mexican employer) to provide pre-arranged professional services to a U.S. employer\(^6\).

Admission is granted in 3 year increments\(^7\). Renewals or extensions can also be granted in 3 year increments\(^8\). Unlike other visas, there is no total time limit for the TN status. It can be renewed each year as long as the internationals residence remains temporary.

It is the responsibility of the international employee to file the petition for the TN and provide Georgia College with a copy of the approved notice.

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\(^6\) 8 C.F.R. § 214.6 and I.N.A. § 214(e)(2)
\(^7\) 8 C.F.R. § 214.6(e)
\(^8\) 8 C.F.R. § 214.6(h)
IV. O-1 STATUS

O-1 visas are for people with extraordinary ability in science, education, business or athletics. Evidence must be presented to prove that the international employee holds a level of expertise that indicates s/he is one of a small percentage of individuals that has risen to the top of their field\(^9\). To demonstrate extraordinary ability in science, education, business or athletics, we must prove sustained national or international acclaim by receipt of a major internationally recognized award such as the Nobel Prize, or documenting at least 3 of the following\(^10\):

1. Receipt of nationally or internationally recognized awards;
2. Membership in an organization that requires outstanding achievement;
3. Published materials about the applicant in professional or major trade publications;
4. Judgment of the work of others;
5. Original scientific or scholarly work of major significance in his or her field;
6. Evidence of authorship of scholarly work;
7. Evidence that s/he has been employed in a critical or essential capacity at an organization with a distinguished reputation; or
8. Has commanded or will command a high salary in relation to others in the field.

To prove extraordinary ability and distinction in the arts, we must prove the international employee is prominent in his or her field by being nominated for or the recipient of a significant international or national award or prize, such as an Academy Award, Emmy, Grammy or Director’s Guild Award, or by documenting at least 3 of the following\(^11\):

1. Lead in production having a distinguished reputation;
2. Critical reviews in major newspapers or trade journals;
3. Lead for organization that has a distinguished reputation;
4. Record of major commercial or critically acclaimed successes;
5. Significant recognition from organizations, critics, government agencies or other recognized experts in the field; or
6. Has commanded or will command a high salary.

These standards are extremely difficult to meet. Therefore, a visa consultation with the international faculty member is necessary and crucial in determining the appropriate visa.

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\(^9\) INA § 101(a)(15)(O)
\(^10\) 8 C.F.R. § 214.2(o)(3)(iii)(B)-(C)
\(^11\) 8 C.F.R. § 214.2(o)(3)(iv)(B)-(C)
V. PERMANENT RESIDENCY

Permanent residency allows an international employee to live and work in the U.S. indefinitely.

Georgia College will support a petition for Employment-Based Permanent Residency only under the following conditions:

- 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.

5.0.1 Overview

Employment based immigration is one of the most common ways to obtain permanent residency. Georgia College will process permanent residency for an international employee upon sponsorship approval from the provost. Georgia College will pay the associated filing fees incurred by filing the I-140. In some circumstances premium processing is needed to expedite the process. At the discretion of the provost, Georgia College will pay this fee. All other fees must be paid by the international employee. The department must be in full support of any permanent residency request prior to the Office of Legal Affairs committing to the process, and no petition will be initiated without express written consent from the department chair, approved by the dean and final university approval granted by the provost. Beneficiaries of permanent residency petitions may opt to hire outside counsel to assist with their petitions, but under no circumstances will Georgia College cover the expense or be under any obligation to follow the advice of outside counsel. Although counsel may be sought, the immigrant petition itself must be filed by Georgia College not outside immigration counsel.

The permanent residency process is a two application process. The initial I-140 immigrant petition is completed by the sponsoring employer – Georgia College. The subsequent I-485 change of status petition is completed by the employee. The I-140 and I-485 can be filed concurrently in some cases 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 the I-131 Advance Parole form and the I-765 Employment Authorization form. These are also completed by the employee.
5.1 Georgia College Process to Permanent Residency

The university process for an international employee to obtain permanent residency is as follows:

5.1.1 Department
Any department wishing to sponsor an international employee’s permanent residency must:

1. Contact the Office of Legal Affairs and advise they wish to pursue permanent residency for their international employee;
2. The department should understand there is no guarantee a visa will be granted to the international employee;
3. The department chairperson (or designee) must complete the Departmental Application for Permanent Residency and upload ALL documents to the application and submit – this includes the sponsorship request letter.
   a. The application can be found at: http://immigration.gcsu.edu/Department-PR-Application; or
   b. The link to the application can be provided to them by the Office of Legal Affairs.

Please Note:
- The process will not begin until the requesting department submits the sponsorship application.
- The Office of Legal Affairs will not accept any documents that are not transmitted via the application process unless the OLA has requested otherwise.

Upon submission of the application and all requested documentation, the international employee will be contacted by the Office of Legal Affairs for additional information.

5.1.2 Employee
Once the OLA has received the completed departmental application, the international employee will be sent a link via email to complete the Employee Permanent Residency Application. The international employee must:

1. Complete the visa application and upload ALL REQUESTED DOCUMENTS to the application and submit;
2. The application MUST be completed BY the international employee.
   a. The application can be found at: http://immigration.gcsu.edu/employee-pr-application; or
   b. The link to the application can be provided to them by the Office of Legal Affairs.
Please Note:
- The Office of Legal Affairs will not accept any documents that are not transmitted via the application process unless requested otherwise

5.1.3 Dean
After the requesting department has completed and submitted the application, this includes all requested documents, including the departmental sponsorship letter, the Office of Legal Affairs will send the appropriate dean an email advising of the request with directions on submitting the College sponsorship request. This email will include:

- The departmental sponsorship letter;
- A link to the Immigration Database with an explanation to locating the letter templates and where to go to upload the sponsorship letter.
  - The Immigration Database can be found at: [http://immigration.gcsu.edu/](http://immigration.gcsu.edu/).

The dean (or designee) should download the appropriate letter and edit accordingly, print on university letterhead and sign. The letter should be converted into an acceptable electronic format, uploaded and submitted via the link indicating Letter to Provost.

5.1.4 Academic Affairs
Upon receipt of the sponsorship letter from the dean, the OLA will send an email to the provost, associate provost, and one staff member in the Office of Academic Affairs. This email will include the following:

- The departmental sponsorship letter;
- The dean’s sponsorship letter; and
- A link for Academic Affairs to submit the letter containing university approval.

A staff member in Academic Affairs should download all sponsorship letters and submit to the provost for approval. Once the provost issues university approval, the document containing written approval should be converted into an electronic format and uploaded to the link provided by the Office of Legal Affairs. This link can also be found at: [http://immigration.gcsu.edu/upload-templates](http://immigration.gcsu.edu/upload-templates).

Once this initial information has been analyzed, the OLA staff will contact the supervisor and the international employee regarding the procedures required by the US Department of Labor and USCIS. Depending on the category of permanent residency sponsorship, the department may need to re-advertise the employee’s position and review all applications submitted for the position in order to meet Department of Labor requirements. If one qualified US worker is found through this recruitment, the permanent residency process cannot continue. The re-advertisement process is strictly controlled by the Department of Labor.
5.2 Documentation

A great deal of the process revolves around the assembling of documentation and the inevitable waiting for approvals. OLA requires all documentation be submitted via the PR Application. The only documentation that will be accepted in the original format are documents on official letterhead when requested by USCIS. The 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 the international employee and department chairperson or designee to assemble all original documents in preparation for filing and to provide copies to OLA, via the PR Application, for actual submission. Originals should be maintained by the employee in a secure place in case of audit by USCIS.

5.2.1 Overall Criteria for Permanent Residency
The following criteria must be met to qualify for permanent residency:

- 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 position must require a minimum of a bachelor’s degree in a related field of study - requirement may be higher depending on the level of visa petition desired;
- The applicant must have education and experience commensurate with the position’s documented requirements; if the position requires a specific field of study, the applicant must have education/experience specifically in that field; and
- The department, Academic Affairs, and Human Resources must be able and willing to document the above, along with justification of the recruitment process, in writing.
5.3 Overview of Sponsorship Categories

There are three categories for which Georgia College can sponsor Employment Based Permanent Residency. Each process has its own set of qualifications, procedures, and documentation requirements. The PR process should be initiated by the employing department, as assistance with PR cases is intended for the benefit of the university in meeting Georgia College’s goals of internationalizing the campus. Any request for permanent residency is based on a permanent, full-time employment commitment by the university.

The three categories that are available to international employees at GC are:

5.3.1 Outstanding Professor/Researcher (EB-1 category)
To qualify for the Outstanding Professor/Researcher category, the international employee must meet the following criteria:

- Be recognized as outstanding in their respected academic field;
- Have a minimum of three years teaching and research experience in their respected academic field;
- Must have a permanent tenure or tenure-track position at GC in their field of study\(^{12}\).

GC must submit to USCIS the I-140 immigrant petition with all necessary supporting documents including those established by preponderance of the evidence\(^{13}\). This documentation will include but not limited to:

- Extensive documentation providing justification to national or international recognition in their academic field;
- Official justification of teaching and/or research experience\(^{14}\);

5.3.2 Department of Labor PERM Processing for individuals with teaching responsibilities (EB-2 category)
To qualify under the EB-2 category for USCIS, the international employee must meet the following standards:

- Must be a member of the professions;
- Have an advanced degree; and
- The minimum requirement for the job must be an advanced degree.

The three qualifying requirements for this category for the DOL are:

- The individual have some percentile of teaching responsibilities.

\(^{12}\)INA 203(b)(1)(B); and 8 CFR 204.5(i)
\(^{13}\)8 C.F.R. § 204.5(i)(3)(i)
\(^{14}\)8 C.F.R. § 204.5(i)(3)(ii)
- The advertisement for the position must have appeared in a PRINT ad in the Chronicle of Higher Education or appropriate professional journal.
- The application must be submitted to the Department of Labor WITHIN 18 months of the DATE OF JOB OFFER.

This category requires GC to submit a PERM application (ETA 9089) to the Department of Labor and the I-140 immigrant petition to USCIS after approval from the DOL.

5.3.3 Department of Labor PERM Processing for positions that do not have teaching responsibilities (EB-2 or EB-3 category)
This category may include positions that require only a bachelors or master’s degree. This process is the most time consuming because it requires a true “Test of the Labor Market”. This means that the position will have to be advertised in a number of ways including twice in the local newspaper, Sunday editions, an open job ad with the Georgia Department of Labor, and additional advertising from a select list of approved ways. The department will need to interview any individuals who are citizens or permanent residents who have the minimum qualifications for the position. If the international employee is found to be the only qualified candidate, the PR application can move forward. The DOL has strict guidelines that must be followed to meet the specific standards.

This category requires GC to submit a PERM application (ETA 9089) to the Department of Labor and the I-140 immigrant petition to USCIS after approval from the DOL.
5.4 Work Eligibility and Timeframe

Most international employees will be hired at GC and initially sponsored for a non-immigrant work visa such as an H-1B. During the PR application process, the Office of Legal Affairs will work with the sponsoring department and the international employee to maintain and extend the underlying H-1B work status as needed, until the PR application is approved, and the “green card” is issued. These time estimates are general and can change without notice based on government processing times. These estimates DO NOT take into consideration any delays that are common due to the following factors:

- Immigrant visa backlogs for certain categories and for employees with certain citizenships. These delays can exceed several years.
- Security clearance delays on the part of the government. These delays can exceed 6 to 12 months
- Delays in receiving required information from the sponsoring department or international employee.

5.4.1 Outstanding Professor or Researcher (EB-1)

- Assembling and Filing the I-140 application: 2 to 5 months (this depends largely on how long it takes the employee to assemble all evidence)
- Receiving approval from USCIS on the I-140: 4 to 6 months
- Assembling and Filing the I-485 adjustment of status application (by the employee): 2 to 4 months
- Receiving approval of the I-485, and receipt of the “green card”: 6 to 8 months
- Total time: 14 months to 2 years

5.4.2 PERM cases NOT requiring re-advertising and re-recruitment (EB-2 for teaching positions)

- Assembling and filing the PERM application to the Department of Labor: 1 to 3 months
- Receiving PERM approval from the Department of Labor: 4 to 6 months
- Assembling and Filing the I-140 application: 1 to 2 months
- Receiving approval from USCIS on the I-140: 4 to 6 months
- Assembling and Filing the I-485 adjustment of status application (by the employee): 2 to 4 months
- Receiving approval of the I-485, and receipt of the “green card”: 6 to 8 months
- Total time: 18 months to 2 years
5.4.3 PERM cases requiring re-advertising and re-recruitment (EB-2 and EB-3)

- Advertising, recruiting, assembling and filing the PERM application to the Department of Labor: 6 to 8 months
- Receiving PERM approval from the Department of Labor: 4 to 6 months
- Assembling and Filing the I-140 application: 1 to 2 months
- Receiving approval from USCIS on the I-140: 4 to 6 months
- Assembling and Filing the I-485 adjustment of status application (by the employee): 2 to 4 months
- Receiving approval of the I-485, and receipt of the “green card”: 6 to 8 months
- Total time: 2 to 3 years
5.5 The Permanent Residency Petition Process

The process generally includes the following steps:

5.5.1 Prevailing Wage determination
A Prevailing Wage Determination is only necessary in categories where a Labor Certification is required AND where there is no existing, non-expired prevailing wage from a previous status request. OLA will obtain a prevailing wage determination from the National Prevailing Wage Center (NPWC) in Washington, D.C. by completing a form which asks for the responsibilities, skills, experience, as well as other factors required for the job. An analyst at the NPWC will refer to salary surveys on hand and match the job description with their surveys and come up with a salary that s/he believes is an accurate reflection of the industry. Normally the Occupational Employment Statistics (OES) published by the Bureau of Labor Statistics is used to index the prevailing wage rate prior to submitting the prevailing wage request, but valid wage surveys such as the CUPA-HR and NCAA surveys can also be used to support the case for a particular wage.

The employer is required to pay the alien worker the higher of either the prevailing wage or the actual intended wage. 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 salary increase option is not available beyond the normal rate of pay for other GC employees in comparable positions with similar education and experience.

The turnaround time for prevailing wage determinations averages 4 weeks, but may take longer in cases where the NPWC provides an unsatisfactory response.

5.5.2 Advertising and Recruitment
Evidence of advertising and recruitment are only necessary for categories that require a Labor Certification. The position must be advertised publicly with the Ga DOL, the GCSUJobs website, in print and on campus no less than 30 days and no more than 180 days prior to filing for Labor Certification. For tenure-track faculty positions in which an offer was made less than 18 months ago, please see the section below on Optional Special Recruitment.

Positions requiring Labor Certification must first undergo a recruiting effort designed to validate that there are no U.S. workers willing, able and qualified available to take the position at the prevailing wage for this area, and that the wages and working conditions are consistent with similar positions occupied by US workers.

If the application is for a professional occupation, the employer must conduct the recruitment steps within 6 months of filing the application for alien employment certification. The employer must maintain documentation of the recruitment and be prepared to submit this documentation in the event of an audit or in response to a request from the Certifying Officer prior to rendering a final determination.
College and university professors hired under a documented competitive recruitment process are exempted from the Basic Recruitment process but are still required to provide a Recruitment Report which full documents the recruiting process.

If the Department of Labor is not satisfied with the Labor Certification, they can (and have) directly supervised recruiting efforts on campus.

5.5.3 Basic Recruitment Steps for Professional Occupation

1. HR places a job order with the Georgia Department of Labor that will post the position on the state labor board for 30 days

2. HR places a print ad to run on two different Sundays in the Union Recorder or Macon Telegraph.

3. HR engages in on-campus recruitment by posting the position internally

4. HR posts the position on the gcsujobs website as well as an outside job-search website

5. HR posts Labor Certification Notices on the HR board as well as in the department for which the international employee works

6. Applications are collected in HR and forwarded to the department for review

7. Applicants who do not meet minimum requirements are rejected by the department

8. All applicants who meet minimum requirements are either rejected for lawful reasons or interviewed within 10 days of receipt of application by the department.

9. The Department and/or Human Resources are to provide the following to the Office of Legal Affairs:
   a. All applicant’s names
   b. Interviewed applicants contact information
   c. Specific, lawful reasons for rejections of unsuitable candidates

NOTE: Steps 1 and 2 are considered mandatory for all professional positions according to 20 CFR 656.17 and must be executed no less than 30 days and no more than 180 days prior to the filing of the Labor Certification.

NOTE: All applicants who are rejected or interviewed and not selected must be rejected for specific, lawful reasons

NOTE: if a minimally qualified U.S. worker is identified, or if the necessary skills could be obtained through on-the-job training, the Labor Certification will likely be denied by the Department of Labor.
5.5.3.1 Optional Special Recruitment for College and University Teachers

Optional Special Recruitment can be invoked if Georgia College can validate that competitive, fair recruitment occurred in the initial recruiting process for classroom based instructional faculty. This option is not available for non-classroom based research or non-faculty positions.

To qualify:

1. The position must have been posted, in print, in at least one national professional journal,
2. The applicant must have been identified through a competitive recruitment process,
3. The foreign national must have been found to be —more qualified than any of the United States workers who applied for the job, and
4. The labor certification must be filed within 18 months from the date of the job offer letter, not the date of hire.

If a Labor Certification application is not filed within 18 months after the selection was made, the employer must complete the Basic Recruitment Steps that are required for professional occupations.

Please note that it may be more difficult justifying the permanent employment of a foreign national using the Basic Recruitment process.

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.

5.5.4 Labor Certification

Labor certification is not required for all employment-based immigrant categories. The purpose of the Labor Certification is to satisfy the U.S. DOL that there are no U.S. workers ready, willing, or able to take the specific job that has been offered to the applicant. To obtain a labor certification, GC files form ETA-9089 online with the US Department of Labor through the PERM system. The PERM process must be completed well in advance of the expiration date of the Prevailing Wage Determination but no earlier than 30 days and no later than 180 days after the posting requirement in step 2 has been completed. The turnaround time varies greatly for labor certifications and can take up to several years if audited.

Once the Labor Certification is filed, GC will receive a notice of acceptance for processing. This date listed on this notice will eventually translate into the international employee’s Priority Date, which indicates the date he/she entered processing for Permanent Residency. The Priority Date is used to determine when the international employee will receive a visa number later in the process. All Labor Certifications filed after July 16, 2007 must be filed in support of an I-140 within 180 days or they become invalid and a new Labor Certification must be filed.
A hard copy of the Labor Certification will be mailed to the GC Office of Legal Affairs upon certification and the original must be signed by both a representative from OLA and the beneficiary immediately. This original will be submitted as part of the I-140 petition by GC.

5.5.4.1 **Criteria for Labor Certification**
- The offered salary must be equal to or greater than the prevailing wage as determined during the Prevailing Wage Certification process
- GC can demonstrate that we are financially viable enough to pay the salary offered
- GC can place the applicant on payroll on or before the date of the applicant’s proposed entrance into the US
- No job discrimination occurred during selection for the job
- The terms of the job are not in conflict with any federal, state or local laws
- The job opportunity was made available to any and all US workers
- The US workers who applied and were rejected were rejected for lawful reasons
- The job opportunity is for full time, regular employment

No fee is currently required for Labor Certification.

5.5.4.2 **Supporting documents for Labor Certification**
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 GCSUjobs
4. Journals, including Chronicle of Higher Education or professional journals
5. Print ads in the Union Recorder or Macon Telegraph
6. Recruitment Report
7. Spreadsheet detailing all applicants and lawful reasons for rejection.
5.5.5 Filing of I-140 Visa Petition
Once the Labor Certification is approved and prior to its expiration, the Office of Legal Affairs will submit an I-140 Immigrant Petition for Alien Worker along with all supporting documentation and the fee to USCIS.

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 and the availability of visa numbers for the foreign national’s country of origin. The progress of the I-140 petition can be tracked on the USCIS website. Requests for Evidence (RFEs) can significantly slow the process as well.

If the visa status 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.

5.5.6 Filing I-485 Petition to Adjust Status
Once the I-140 is approved and a visa number becomes available, the applicant can submit the I-485 packet to the USCIS if he/she was unable to file concurrently. There are additional forms and fees associated with the I-485 packet for which the applicant will be responsible. These include requests for employment authorization and travel documents. These additional forms are not always necessary for applicants who are already in an approved H-1B status. They are, however, necessary for employees whose H-1B status will expire while the I-485 is pending or whose dependents wish to gain employment authorization.

GC generally does not assist the applicant in filling out the forms, but we are more than happy to review the application and supporting documents with the applicant to ensure completeness.

IMPORTANT: The I-140 approval does not by itself change the applicant’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.

Once USCIS approves the I-485, a Permanent Residency Card (green card) will be mailed to the applicant. It is imperative that the employee contact the Office of Legal Affairs once they have received the permanent residency card so that their immigration file can be properly closed and their I-9 Employment Authorization revalidated.
VI. FEES

Federal law requires GC to pay the following fees as applicable. These fees are subject to change at the discretion of the federal government:

- I-129 Filing Fee (H-1B visas) $325
- Fraud Prevention and Detection fee (H-1B) $500
- I-140 Filing Fee (PR/DOL) $580

At the discretion of the Provost, and on a case by case basis, the university will pay the following fees. Otherwise, the employee would be responsible for this fee. This fee is subject to change at the discretion of the federal government:

- I-907 Premium Processing (Visas or PR) $1,225

This is not an inclusive list of all fees; simply the most common fees paid by the university. The fees are set by USCIS and are subject to change.

Under Federal law, GC will not pay attorney fees for visas. Such fees are the responsibility of the employee.

GC is required to pay the attorney fees and filing fees (as well as other costs as may be required such as advertising) for the Department of Labor certification costs when sponsoring a permanent residency application. The employee is responsible for the remaining filing fees and attorney costs. The employee should contact the immigration attorney to regarding those fees.

As stated in the Introduction, the employee is required to use the same immigration attorney as used by GC in sponsoring visas and permanent residency.
VII. GLOSSARY

Academic Field

_Academic field_ means a body of specialized knowledge offered for study at an accredited United States university or institution of higher education.

8 C.F.R. § **204.5(i)(2)**

The actual wage is the wage rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question. In determining such wage level, the following factors may be considered: Experience, qualifications, education, job responsibility and function, specialized knowledge, and other legitimate business factors. "Legitimate business factors," for purposes of this section, means those that it is reasonable to conclude are necessary because they conform to recognized principles or can be demonstrated by accepted rules and standards. Where there are other employees with substantially similar experience and qualifications in the specific employment in question--i.e., they have substantially the same duties and responsibilities as the H-1B nonimmigrant--the actual wage shall be the amount paid to these other employees. Where no such other employees exist at the place of employment, the actual wage shall be the wage paid to the H-1B nonimmigrant by the employer. Where the employer's pay system or scale provides for adjustments during the period of the LCA--e.g., cost of living increases or other periodic adjustments, or the employee moves to a more advanced level in the same occupation--such adjustments shall be provided to similarly employed H-1B nonimmigrants (unless the prevailing wage is higher than the actual wage).

20 C.F.R. § **655.731(a)(1)**

Advanced Degree

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

8 C.F.R. § **204.5(k)(2)**

Advance Parole

A special travel authorization necessary for individuals who must travel while an application for adjustment of status is pending. An adjustment applicant who departs the United States without first obtaining advance parole is considered to have abandoned the adjustment application.

8 C.F.R. § **245.2(a)(4)(ii)**
| **Advance Parole** | Permission to return to the United States after travel abroad granted by DHS prior to leaving the U.S. The following categories of people may need advance parole: people on a K-1 visa, asylum applicants, parolees, people with Temporary Protected Status (TPS) and some people trying to adjust status, while in the U.S. If these people do not apply for advance parole before they leave the United States, they may be unable to return. |
| **Alien** | Any person not a citizen or national of the United States. INA § 101(a)(3) |
| **Arrival-Departure Card** | Also known as Form I-94, Arrival-Departure Record. The Department of Homeland Security, Customs and Border Protection official at the port-of-entry gives foreign visitors (all non-U.S. citizens) an Arrival-Departure Record, (a small white card) when they enter the United States. Recorded on this card is the immigrant classification and the authorized period of stay in the U.S. This is either recorded as a date or the entry of D/S, meaning duration of status. It is important to keep this card safe because it shows the length of time you are permitted and authorized by the Department of Homeland Security to stay in the U.S. It is best kept stapled with your passport, kept in a safe place. The visitors return the I-94 card when they leave the country. The I-94W, Nonimmigrant Visa Waiver Arrival-Departure Record (green card) is for travelers on the Visa Waiver Program. |
| **Case Number** | The National Visa Center (NVC) gives each immigrant petition a case number. This number has three letters followed by ten digits (numbers). The three letters are an abbreviation for the overseas embassy or consulate that will process the immigrant visa case. |
| **Change Status** | Changing from one nonimmigrant visa status to another nonimmigrant visa status while a person is in the US. This is permitted for some types of visas if approved by USCIS. Requests for change of status must be made by the visa holder to the DOHS – USCIS |
| **Curricular Practical Training (CPT)** | Curricular practical training is defined to be alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school. Students who have received one year or more of full time curricular practical training are ineligible for post-completion academic training. Exceptions to the one academic year requirement are provided for students enrolled in graduate studies that require immediate participation in curricular practical training. A request for authorization |
for curricular practical training must be made to the DSO. A student may begin curricular practical training only after receiving his or her Form I-20 with the DSO endorsement.

8 C.F.R. § 214.2(f)(10)(i)(A)

Authority of the Secretary of Homeland Security. All authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security. The Secretary of Homeland Security may, in the Secretary's discretion, delegate any such authority or function to any official, officer, or employee of the Department of Homeland Security, including delegation through successive re-delegation, or to any employee of the United States to the extent authorized by law. Such delegation may be made by regulation, directive, memorandum, or other means as deemed appropriate by the Secretary in the exercise of the Secretary's discretion. A delegation of authority or function may in the Secretary's discretion be published in the Federal Register, but such publication is not required.

8 C.F.R. § 2.1

Department of Homeland Security (DOHS)

Dual Intent

An alien (H-1B) that is not subject to the presumption of immigrant intent

Department of Labor (DOL)

A cabinet level unit/ministry of United States Government that has responsibility for labor issues. It has responsibility for deciding whether certain foreign workers can work in the United States. Hiring foreign workers for employment in the U.S. normally requires approval from several government agencies. First, employers must seek labor certification through the U.S. Department of Labor (DOL). Once the application is certified (approved), the employer must petition the U.S. Citizenship and Immigration Services (USCIS) for approval of the petition before applying for a visa.

Employment Authorization Document (EAD)

A work permit issued by USCIS that provides legal documentation for a US citizen or permanent resident to work in the US

H-1B Classification

8 CFR § 214.2 (h)(1)(ii)(B)(1)

(1) To perform services in a specialty occupation (except agricultural workers, and aliens described in section 101(a)(15) (O) and (P) of the Act) described in section 214(i)(1) of the Act, that meets the requirements
of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act;

8 CFR § 214.2 (h)(1)(ii)(B)(2)

(2) To perform services of an exceptional nature requiring exceptional merit and ability relating to a cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense;

8 CFR § 214.2 (h)(1)(ii)(B)(3)

(3) To perform services as a fashion model of distinguished merit and ability and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act.

8 CFR § 214.2 (h)(1)(ii)(C)

The term “immigrant visa” means an immigrant visa required by this Act and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this Act.

INA § 101(a)(16)

The term "immigration laws" includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

INA § 101(a)(17)

The Immigration and Nationality Act, or INA, was created in 1952. Before the INA, a variety of statutes governed immigration law but were not organized in one location. The McCarran-Walter bill of 1952, Public Law No. 82-414, collected and codified many existing provisions and reorganized the structure of immigration law. The Act has been amended many times over the years, but is still the basic body of immigration law.

The INA is divided into titles, chapters, and sections. Although it stands alone as a body of law, the Act is also contained in the United States Code (U.S.C.). The code is a collection of all the laws of the United States. It is arranged in fifty subject titles by general alphabetic order. Title 8 of the
U.S. Code is but one of the fifty titles and deals with "Aliens and Nationality". When browsing the INA or other statutes you will often see reference to the U.S. Code citation. For example, Section 208 of the INA deals with asylum, and is also contained in 8 U.S.C. 1158. Although it is correct to refer to a specific section by either its INA citation or its U.S. code, the INA citation is more commonly used.

_Institution of higher education_ means an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965. Section 101(a) of that Act, 20 U.S.C. 1001(a)(2000), provides an institution of higher education is an educational institution in any state that:

(A) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(B) Is legally authorized within such state to provide a program of education beyond secondary education;

(C) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(D) Is a public or other nonprofit institution; and

(E) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined there is satisfactory assurance the institution will meet the accreditation standards of such an agency or association within a reasonable time.

20 C.F.R. § 656.40(e)(1)(i)

Application for Permanent Employment Certification, ETA Form 9089. The initial stage of the process by which certain foreign workers get permission to work in the United States. The employer is responsible for getting the labor certification from the Department of Labor. In general the process works to make sure that the work of foreign workers in the U.S. will not adversely affect job opportunities, wages and working conditions of U.S. workers.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Labor Condition Application</td>
<td>Attestation by an employer when filing for H-1B that there will be no adverse impact on the wages and working conditions of US workers.</td>
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<td>(LCA)</td>
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<tr>
<td>Lawful Permanent Residency</td>
<td>A foreign national who has immigrated to the US and has been authorized to live and work permanently in the United States.</td>
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<tr>
<td>(LPR)</td>
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<tr>
<td>Maintaining Legal Status</td>
<td>Abiding by the rules and regulations pertaining to a particular nonimmigrant visa application.</td>
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<tr>
<td>Non-Immigrant</td>
<td>An alien who seeks temporary entry to the United States for a specific purpose. The nonimmigrant classifications include: foreign government officials, visitors for business and for pleasure, aliens in transit through the United States, treaty traders and investors, students, international representatives, temporary workers and trainees, representatives of foreign information media, exchange visitors, fiance(e)s of U.S. citizens, intracompany transferees, NATO officials, religious workers, and some others. Most nonimmigrants can be accompanied or joined by spouses and unmarried minor (or dependent) children.</td>
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<td>INA § 101(a)(15)</td>
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<tr>
<td>Non-Immigrant Visa</td>
<td>A U.S. visa allows the bearer, a foreign citizen, to apply to enter the United States temporarily for a specific purpose. Nonimmigrant visas are primarily classified according to the principal purpose of travel. With few exceptions, while in the U.S., nonimmigrants are restricted to the activity or reason for which their visa was issued. Examples of persons who may receive nonimmigrant visas are tourists, student, diplomats and temporary workers.</td>
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<td>INA § 101(a)(26)</td>
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<td>Notice of Action</td>
<td>A Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) immigration form, Notice of Action, Form I-797 that says that USCIS has received a petition you submitted, taken action, approved a petition or denied a petition.</td>
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</table>
Optional Practical Training (OPT)

Optional practical training (OPT) is defined in the regulations as "temporary employment for practical training directly related to the student's major area of study."

8 C.F.R. § 214.2(f)(10)(ii)

The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

INA § 101(a)(31)

Permanent

A designated location in the US or its territories for aliens and US citizens that acts as an entry point into the US. Locations also serve as location for aliens to adjust immigrant status. Locations also serve other functions as well.

INA § 235; 8 C.F.R. Part 235

Premium Processing

Premium Processing Service provides faster processing for certain employment-based petitions and applications. Specifically, USCIS guarantees 15 calendar day processing to those petitioners or applicants who choose to use this service or USCIS will refund the Premium Processing Service fee. If the fee is refunded, the relating case will continue to receive expedited processing.

The 15 calendar day period will begin when the current version of Form I-907, Request for Premium Processing Service, is received by USCIS at the correct filing address noted on the form. USCIS will issue and serve on the petitioner or applicant an approval notice, a denial notice, a notice of intent to deny, a request for evidence or open an investigation for fraud or misrepresentation within the 15 calendar day period. If the petition or application requires the submission of additional evidence or a response to a notice of intent to deny, a new 15 calendar day period will begin upon receipt by USCIS of a complete response to the request for evidence or notice of intent to deny.

Prevailing Wage

The prevailing wage for the occupational classification in the area of intended employment must be determined as of the time of filing the application. The employer shall base the prevailing wage on the best information available as of the time of filing the application. Except as provided in this section, the employer is not required to use any specific methodology to determine the prevailing wage and may utilize a wage
obtained from an OFLC NPC (OES), an independent authoritative source, or other legitimate sources of wage data.
20 C.F.R. § 655.731(a)(2)

Priority Date

The priority date decides a person's turn to apply for an immigrant visa. In family immigration the priority date is the date when the petition was filed at a Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services office or submitted to an Embassy or Consulate abroad. In employment immigration the priority date may be the date the labor certification application was received by the Department of Labor (DOL).

Specialty Occupation

A "specialty occupation" for H-1B purposes is an occupation that requires (A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.
INA § 214(i)(1)

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.
8 CFR § 214.2(h)(4)(ii)

Re-entry Permit

A travel document that the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services issues to lawful permanent residents (LPRs) who want to stay outside of the U.S. for more than one year and less than two years.

Request for Further Evidence (RFE)

Submitted by the USCIS to request clarifying evidence; when submitted in response to an I-539 request time limit is 30 days; otherwise response time for evidence coming from within the US is 42 days, and outside the US is 84 days.

Temporary Worker

A foreign worker who will work in the United States for a limited period of time. Some visas classes for temporary workers are H, L, O, P, Q and
**US Department of State (DOS)**

The State Department is responsible for administering the Exchange Visitor Program and overseeing diplomatic affairs and foreign relations for the US including the US consulates that issue visas to visitors to travel to the US.

**USCIS (United States Citizenship and Immigration Services)**

U.S. Citizenship and Immigration Services (USCIS) is the government agency that oversees lawful immigration to the United States.

**Visa**

A citizen of a foreign country, wishing to enter the U.S., generally must first obtain a visa, either a nonimmigrant visa for temporary stay, or an immigrant visa for permanent residence.

**Visa Expiration Date**

The visa expiration date is shown on the visa. This means the visa is valid, or can be used from the date it is issued until the date it expires, for travel for the same purpose, when the visa is issued for multiple entries. This time period from the visa issuance date to visa expiration date as shown on the visa, is called visa validity. The visa validity is the length of time you are permitted to travel to a port-of-entry in the United States to request permission of the U.S. immigration inspector to permit you to enter the U.S. The visa does not guarantee entry to the U.S. The Expiration Date for the visa should not be confused with the authorized length of your stay in the U.S., given to you by the U.S. immigration inspector at port-of-entry, on the Arrival-Departure Record, Form I-94, or I-94W for the Visa Waiver Program. The visa expiration date has nothing to do with the authorized length of your stay in the U.S. for any given visit.