Immigration Rights and Responsibilities of International Faculty and Staff in H-1B Status

Purpose
Georgia College & State University has petitioned U.S. Citizenship and Immigration Services (USCIS) on your behalf and secured approval to employ you in H-1B status. There are a number of rules and procedures governing H-1B status that you must follow, and others that must be followed by Georgia College. It is important for you to understand these in order to maintain lawful status and to remain lawfully employed by this institution.

This pamphlet summarizes some of the important rights and responsibilities you have as an employee in H-1B status in relation to regulations of U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of Labor (DOL). It also identifies some of the situations for which you should seek assistance from the Office of Legal Affairs. It is, of course, impossible to cover all U.S. laws and procedures that might affect you in every situation. We strongly advise you to contact the immigration specialist at visas@gcsu.edu any time you have a question or if you intend to travel and reenter the United States.

The H-1B Classification
The United States government defines the H-1B as a classification granted for an individual to work in a “specialty occupation”. A specialty occupation is described as a position that requires application of a highly specialized body of knowledge in a field that normally requires a bachelor’s degree (or the equivalent) or higher in the specialty as a minimum requirement for entry into the occupation in the United States. To qualify for the H-1B visa classification, the employee must possess at least a bachelor’s degree, or the equivalent, in the specialty field.

The I-797 Approval Notice
The Office of Legal Affairs has provided you with the original Approval Notice (Form I-797) issued by USCIS. (The Office of Legal Affairs has retained a copy of this form). This document contains your name as the beneficiary, shows The Trustees of Georgia College & State University as the employer, and also indicates the period of time during which you may be employed by Georgia College in H-1B status. If the petition was for an extension of your current H-1B status or changed your status to H-1B, the I-797 also includes a tear-off I-94 card. As instructed on the
form, please remove the I-94 card and place it in your passport, preferably by stapling it on top of your current I-94 card if you have one.

The I-797 Approval Notice is a very important document. You must present it to a consular officer if you apply for an H-1B visa, and to a port of entry official if you enter (or re-enter) the U.S. in H-1B status. Along with your I-94 card and passport, it is primary proof that you hold lawful status in this country. Please take good care of this document and place it in a safe and secure location after your travels. You will also need this document when you apply for a driver’s license.

**Employment Start Date:** If you are currently outside the U.S., you may enter the country up to ten (10) days prior to the start date indicated on the I-797. You must begin employment at Georgia College no later than 30 days after the I-797 start date, or 30 days after the date you enter the U.S., whichever is later. Likewise, if you are currently in the U.S., you must begin work at Georgia College no later than 30 days after the I-797 start date. Please consult with the Office of Legal Affairs if you will not be able to adhere to this timeline.

**Employment End Date:** You may be employed by Georgia College up to, and including, the end date on the I-797 Approval Notice. However, you may not stay in the U.S. beyond that date. While this seems rather contradictory, there are very serious consequences under U.S. immigration regulations for “overstaying” your period of H-1B authorization. Please plan accordingly. See “Extension of H-1B Status” below to understand how extension applications affect your ability to stay in the U.S.

**Your H-1B Status is Employer and Job Specific**

The petition submitted on your behalf was specific to the department, position title, duties, salary and location of work to be performed. If you expect any aspect of your job to change, you and/or your hiring department must contact the Office of Legal Affairs before allowing those changes to go into effect. It may be necessary for the OLA to submit an amended H-1B petition to the USCIS. If so, the changes cannot take place until the amended petition is submitted. While the OLA expects the hiring department to notify our office of these changes, it is strongly recommended that you also contact the office to be sure the necessary documentation has been submitted.

**Working for and/or Receiving Payment from another Employer**

Your H-1B status permits you to work **ONLY** for Georgia College & State University and only for the job specified in the original petition. You may not accept employment for any other employer unless that employer submits a “concurrent” H-1B petition. Georgia College’s scholars are often invited to give lectures or seminars at other institutions. You may accept such invitations, but you may not accept compensation (pay) for them. The host may pay your expenses (i.e., transportation to the lecture, hotel, food, etc.), but may not pay you, for example, an honorarium. To accept this type of compensation is a violation of your immigration status.

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**Time Limitations for H-1B Status**
You are permitted to be in the U.S. in H status for a total of six (6) years. Your employer can apply for H status on your behalf for between one and three years at a time. **This time limitation includes any time you spent in previous H-1B status.** At the end of six years, you must either change to another immigration status or depart the U.S. Once you have remained outside the U.S. for at least one year, an employer may obtain a new H-1B approval for you and you may once again enter the U.S. to begin another six years.

**Extension of H-1B Status**
Georgia College is permitted to apply for H-1B approval for periods up to three (3) years initially. Any number of extensions can be requested through additional petitions until your total time in H status reaches six (6) years. Where possible, the OLA will petition for an initial period of three years, then petition for an extension of the remaining three years. Requests for extensions should be submitted to the Office of Legal Affairs no later than six months prior to the expiration of the current I-797 Approval Notice.

**Dependents**
If you have a spouse and/or children under the age of 21, they may obtain H-4 visas and enter the U.S. with you or at a later date, or they may change status to H-4 as you change status to H-1B. Children holding H-4 status must apply to change to another lawful immigration status or depart the U.S. upon reaching their 21st birthday. Dependents in H-4 status may study full- or part-time, but may not be employed in the U.S. in any capacity. There are no exceptions. The Georgia College Office of Legal Affairs cannot provide you with any legal advice nor file sponsorship petitions on behalf of your dependents.

**Labor Condition Application (“LCA”) Attestations**
When processing your H-1B petition, Georgia College promised to abide by certain conditions of your employment according to rules of the U.S. Department of Labor by certifying a Labor Condition Application. Among other items, Georgia College certified that it will pay you the required wage rate, that it will offer you the same working conditions as all other similarly employed workers, that you will receive the same benefits offered to all employees, and that Georgia College will pay the reasonable cost of transportation to your last place of foreign residence should the institution choose to terminate your employment prior to the end of the period of your authorized employment. A copy of the LCA was included with the copy of the full petition package given to you after the H-1B was approved. If you have any questions regarding the LCA, please contact the immigration specialist at visas@gcsu.edu.

**Change of Address**
If you move at any point while residing in the U.S. in H-1B status, you are required by immigration regulations to notify USCIS of your new address within ten (10) days of moving. Notification must be made on Form AR-11 which can be downloaded from the USCIS website. It is strongly recommended that you use certified mail or a reliable express service (e.g., FedEx, UPS, DHL, etc.) to submit the form. You should also keep a copy of the completed and signed form.

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**Traveling Outside the U.S.**

Anytime you depart the U.S. for any country other than Canada or Mexico, it is important that you surrender your I-94 card (the small white card stapled in your passport) to the airline or other port-of-departure official. In order to return to the U.S. in H-1B status, you must have a valid H-1B visa, a passport that is valid for at least six months into the future from the date of your entry, and the I-797 Approval Notice.

When re-entering the U.S., take a close look at the new I-94 card given to you by the port of entry inspector to be certain that you have been admitted for the proper duration of time. If the date written on the I-94 card by the port of entry inspector does not match the end date of your I-797 Approval Notice, please ask the inspector why she/he chose this date and to correct. It is important to note that the port of entry inspector is permitted to admit you for a period up to ten (10) days beyond the end date of the Approval Notice, though few inspectors choose to grant this extra “grace period.” If you are granted the extra ten days to remain in the U.S., you must still cease employment on the end date of your I-797 Approval Notice.

**Form I-9: Employment Eligibility Verification**

You are required to complete a Form I-9 in the Department of Human Resources and Employee Relations within three (3) days of beginning work at Georgia College and when an extension or amendment of your H-1B is granted. Form I-9 is a document that every employee, U.S. or foreign, must sign to verify that the employee holds valid employment authorization. Please bring your passport and all other immigration-related documents with you.

**Copy Your Documents**

It is strongly recommended that you make clean, clear photocopies of all your immigration documents including your passport, visa stamps and any I-94 card you obtain. Keep these in a safe place. It is also recommended that you make these part of your permanent records.

**Carrying Your Documents at All Times**

Immigration laws require you to carry at least your I-94 card with you at all times. If you choose not to carry the I-94 card on a daily basis, it is strongly recommended that you carry a copy of your I-94 card. For further protection, you should also carry copies of your passport, visa and the entire I-797 Approval Notice.

**Leaving Georgia College to Work for a Different Employer**

If you plan to leave Georgia College and begin working for another employer at any point, it is important that you consult with your new employer, the Office of Legal Affairs and/or an immigration attorney to be sure that you handle the transition in a way that does not violate your immigration status. For example, if the new employer will petition for H-1B approval for the new job, you must continue working at Georgia College until the new petition is submitted. Timing and proper procedures are vital and sometimes confusing.
Taking Classes within the University System of Georgia
You are permitted to enroll in individual classes while in H-1B status as long as you continue working in your H-1B position without change.

Legal Representation
All employment-based immigration matters on behalf of Georgia College are processed through the Office of Legal Affairs. Only the General Counsel is authorized to sign the legal documents and forms required to sponsor international employees. Georgia College works with an outside immigration attorney that is approved by Georgia’s Attorney General’s office to assist the University System of Georgia and affiliated institutions on all immigration matters. The international employee must also use the same immigration attorney that represents Georgia College.