

**NC A&T State University
Human Resources**

Foreign National Employment Policy



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INTRODUCTION

The Department of Human Resources often receives inquiries from academic departments seeking to bring scholars to the United States for appointments and lectures. When making these arrangements, academic departments should keep in mind that U.S. Immigration law prohibits employers from making payments to visitors without work authorization. These regulations are in effect even if the visitor is only on campus for a brief lecture or appearance.

It is imperative that the University be in full compliance with all federal regulations regarding payments to temporary visa holders. Failure to abide by these regulations may result in significant hardship such as an inability to fulfill financial commitments to the invited guest, penalties and fines to the University, or immigration penalties for the visitor. Academic departments should not assume that foreign national visitors who already hold work authorization in the United States may be paid by North Carolina A & T State University. Most employment visa classifications are job and employer specific. **Further, no foreign national is allowed to begin work at NCA&TSU prior to receiving the proper authorization that constitutes employment eligibility.**

Immigration regulations are complex. Academic departments must therefore communicate their intent to employ a foreign national well in advance. This will enable the Office of the Provost to communicate with the appropriate administrative officer regarding the specific temporary employment-based visa of the visitor. All employment-based visas that require petition processing by North Carolina A & T State University will be managed and filed by the designated personnel as appointed (Department of Human Resources or International Students and Scholars Office).

The Employment Policies and Procedures for Hiring Foreign Nationals manual will govern the University. Such policies may require periodic revisions and updates based on the development of new procedures, the modification of existing policies, or policy changes by The University of North Carolina General Administration and the United States Immigration and Citizenship Service (USCIS) federal regulations.

The Department of Human Resources works in partnership with the Office of the Provost to ensure compliance in the employment process for foreign nationals at North Carolina Agricultural and Technical State University. Academic departments seeking to bring scholars to the United States for appointments and lectures at the University must do so based on the instructions and guidelines established in this policy manual.

CHAPTER I

A. AFFIRMATIVE ACTION

The Affirmative Action Program is designated to assure and to further employment opportunities for women, members of minority groups, and handicapped persons.

Each vice chancellor, dean, director, department chairperson, and supervisor is responsible for implementing the Affirmative Action Program of the University in his/her administrative unit. This program shall be an important objective of the University as it moves toward its goal of educational excellence. (See Equal Employment Opportunity, Chapter I, Section B.)

B. EQUAL EMPLOYMENT OPPORTUNITY

The Policy on Equal Employment Opportunity (EEO) is nondiscriminatory and applies to all applicants, students, or employees on the basis of race, national origin, color, creed, religion, sex, age, physical or mental disability, or veteran's status. This policy covers all conditions of employment, including the following: recruitment, hiring, training, promotion, compensation, fringe benefits, opportunities to serve on committees and decision making bodies, and participation in social and recreational programs.

North Carolina A & T State University is committed to providing equal access to employment and ensures that all employment-related decisions are in accordance with the principles of equal opportunity.

Each vice chancellor, dean, director, department chairperson, and supervisor is responsible for implementing the Equal Employment Opportunity Policy of the University. This policy shall be an important objective of the University as it moves toward its goal of educational excellence.

The Affirmative Action Officer (AAO) is responsible for monitoring the University's equal opportunity and affirmative action efforts and the recruitment and search process. All personnel related actions must be submitted to the AAO officer for review prior to the effective date of the action.

Therefore, each department will follow the established guidelines and procedures for position recruitment, announcement and selection as outlined by the Employment Equal Opportunity policy. This includes, but is not limited to: (1) the completion of all EEO Forms; (2) signature approval from the College or School Dean and Provost; (3) maintenance of documentation of each candidate (i.e., candidate resumes, search committee results, etc.); and (4) submission of those documents to the AAO officer for University file records.

No academic department offer to support temporary employment will be accepted or approved without the proof of the appropriate documentation and compliance of the EEO

process. Further, no offer of employment should be discussed with any applicant/candidate if the department has not followed the guidelines and filed the necessary paperwork with the AA Office.

The proper EEO forms are required to be on file with the AA Officer for all academic positions:

- EEO Form 101: Recruitment Form – Vacant Position with Position Announcement
- EEO Form 102: Personnel Action Certification Form / Equal Employment Opportunity Compliance Report
- EEO Form 103: Personnel Action Compliance Summary
 - *Important Note:* A copy of each applicants resume should be attached to the EEO 103 Compliance Summary

The Equal Employment Opportunity Policy of the University is administered through the office of the Affirmative Action Officer. The University has two (2) positions designated: the vice chancellor for human resources and the affirmative action officer.

RECRUITMENT PRACTICES

North Carolina A & T State University policy requires that all full-time faculty positions and all part-time positions which are expected to extend beyond one academic semester must be opened to recruitment when an opening occurs or is anticipated. Prior to the initiation of recruitment for any full time position, either new or replacement, authorization must be requested and obtained.

When a hiring department is recruiting someone who is not a citizen of the United States or is not a Resident Alien, the prospective employee must be told verbally and confirmed in writing:

- “This appointment is contingent upon the procurement of an appropriate immigration and/or visa status prior to the effective date of the appointment and maintenance of an appropriate status for the duration of the appointment. This will be the responsibility of (employee’s name).”

Educational Credentials

The sponsoring department must collect, review, and certify the required educational credentials from the prospective foreign national employee. These documents must satisfy the educational (academic) qualifications and credentials as *advertised* for the position.

A. SEARCH PROPOSAL

The Search Proposal is designed to:

1. Document the need to create or retain a particular position, and to set forth the budgetary resources that are available or that will be required to support the position, and
2. Describe the process that will be followed in seeking candidates for the position if recruitment is authorized, with particular emphasis on steps that will be taken to comply with the University's affirmative action policy.

All information must be completed. After signature by the department chair and Dean, the form is submitted to the Affirmative Action Officer (AAO).

The proposal is then reviewed for compliance with the University policy of equal opportunity. After this review, the AAO will sign the form and return it to the Dean's Office with a memorandum regarding affirmative action requirements and providing guidelines, availability data for the discipline, listings of any identified potential candidates, and any other available information that may be helpful to the search committee or the hiring authority.

Each recruitment process should be treated as if there is a foreign national candidate in the application pool. This will ensure a consistent practice for search committee's and EEO protocols.

Search Committee Selection Requirements

1. *Search Committee Report:* There are essential elements that must be included in the selection committee report when there is a foreign national candidate.

The final report of the faculty and/or administrative body making the recommendation or selection at the completion of the recruitment process must be part of the EEO file. This report must include the following information:

- List ranking of the candidates
 - The candidate the committee selected
 - The date the committee selected the candidate
 - The name and department of each committee member
 - The signature of the committee chair and each member (no electronic signatures required)
 - Copies of each submitted resume for all applicants
2. *Statement of Hiring Authority:* This statement must detail the recruitment steps undertaken:
 - Narrative of recruitment steps
 - Total number of applicants
 - Reasons for selection
 - List number of applicants rejected (categorize by reason)
 3. *Audit File:* The Department of Labor (DOL) at any time can request documentation supporting the recruitment efforts by the University. Each hiring department is required to compose and submit a completed audit file to the AA

Officer along with all required EEO forms at the completion of each recruitment/selection process. The audit file must contain at a minimum:

- A copy from the venue used for advertisement publication for the vacant position
- Documentation of in-house posting for vacant position
- Final Report of Search Committee
- Statement of Hiring Authority
- Resumes of all applicants
- Completion of all EEO forms

Original documents for the audit file (as outlined above) must be submitted to the AAO for University records. The hiring department must maintain a copy of all documents as outlined.

These documents must remain on file for no less than five (5) years. Failure to comply with DOL requirements can result in harsh penalties for the University and the foreign national employee.

B. MINIMUM ADVERTISING REQUIREMENTS

1. Tenure track faculty positions:
 - Must be advertised nationally.
 - Minimum advertising period is 45 days.
2. Fixed-term faculty positions:
 - Must be advertised 30 days.
 - May be advertised locally and regionally.
3. EPA Non-Faculty:
 - All advertisements (Research Associates and Research Assistant positions are major jobs) must be submitted for equal employment opportunity review and approved by the Affirmative Action Officer prior to listing in Employment Opportunities.
 - Must appear in the NCA&TSU Employment Opportunities - EPA Non-Faculty Openings List.
 - Senior level (Tier 2) positions must be advertised regionally with selected positions advertised nationally.
 - Must be advertised 30 days.
4. Other EPA Non-Faculty:
 - Advertisement approval by the Equal Opportunity Office prior to being listed in the NCA&TSU Employment Opportunities - EPA Non-Faculty Openings List.
 - Must be advertised 30 days

If an advertisement is placed or posted in an outside source other than NCA&STU Employment Opportunities, a copy of the advertisement must be submitted to the Affirmative Action Officer for approval, by completing the EEO Form 101, regardless of the type of position.

C. POSITION ANNOUNCEMENTS AND ADVERTISEMENTS

All positions must be announced in the NCA&TSU Employment Opportunities, under:

- Faculty Jobs or Current Senior (Tier 2),
- Academic and Administrative Officers,
- Research Employee Positions

The type of position will determine the listing category. Positions must be listed a minimum of thirty (30) days, with the exception of Tenure Track positions, and an initial maximum of six (6) months, an additional six months can be granted upon approval by the Affirmative Action Office. Advertisements more than twelve (12) months old cannot support a current appointment. This limitation is based on the assumption that to permit the use of advertisements representing longer period of time, is to ignore the probability that new applicants might have accumulated the requisite degrees or experience in the intervening months. This rule applies to all tenure track, fixed term and EPA non-faculty advertisements.

D. ADVERTISING PRIOR TO FUNDING APPROVAL

University departments may not advertise for a position prior to funding approval.

E. SPECIAL SEARCH REQUIREMENTS FOR CERTAIN FACULTY APPOINTMENTS

Section Under Review

F. EQUAL OPPORTUNITY PROCEDURES FOR CERTAIN EMPLOYMENT PURSUANT TO GRANTS

Section Under Review

G. FORMS REQUIRED TO MEET EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS

Refer to Chapter I: Section - Equal Employment Opportunity

H. NEPOTISM

In order to reduce potential conflict of interest, applicants will not be considered for employment in a position in which they would be subject to supervision or evaluation by a relative.

University departments are recommended to review the official University policy outlining the guidelines for Nepotism: <http://facultypages.ncat.edu/hr/>; NCA&TSU

Personnel Policies – Section II: General Employment Provisions – Employment of Related Persons.

I. NOTIFICATION OF FACULTY DEPARTURES

It is the responsibility of the supervisor and department chair to provide the appropriate notification of employment separation to the Department of Human Resources and/or the EPA Salary Administration Office.

OUTSIDE LEGAL REPRESENTATION

Private counsel for state agencies and state employees may be employed only upon the Attorney General's certification that it is impracticable for him or her to serve as counsel and must have the Governor's approval (N.C. General Statute § 147-17). Also, the Attorney General's written permission must be obtained before any agency retains private counsel (N.C. General Statute § 114-2.3).

As an institution of the state, no department/division administrative officer or university employee can approve or provide signature authorization for an outside attorney to represent North Carolina A & T State University in any capacity for employment-based petitions or work authorization that requires the University's sponsorship for employment. Any employee at NCA&TSU that does so is in direct violation of this policy and may be subject to disciplinary action, up to and including, dismissal.

University departments and its employees are required to consult with the University Legal Affairs Office prior to obtaining outside legal counsel for any matters regarding representation of the North Carolina A & T State University.

The hiring department should never offer legal advice to the foreign national employee or candidate regarding employment-based sponsorship or personal matters regarding employment at North Carolina A & T State University.

CHAPTER II

EMPLOYMENT-BASED IMMIGRATION SPONSORSHIP FOR NON-ACADEMIC POSITIONS

North Carolina A & T State University will only act as the immigration sponsor for foreign nationals in *academic* positions (See Chapter II: Page 10 - Approved Academic Titles). NCA&TSU is committed to hiring domestic US workers for positions that do not require specialized academic knowledge. Foreign nationals may hold non-academic positions at the University if they have already gained work authorization through the United States Citizenship and Immigration Service (USCIS).

If an offer of employment involves an application process to USCIS, the hiring department must consult with the Foreign National Administrator in Human Resources to discuss which employment visa category would be the best option for the University. The hiring department must also provide documentation to show compliance with employment policies, as well as the proper approvals from the College Dean and Office of the Provost have been received.

H-1B Waivers of NCA&TSU Policy: A department may be able to apply for a waiver of this policy for an H-1B Temporary Worker. This exception to the NCA&TSU policy on immigration sponsorship will only be considered for the H-1B worker category (limited to 6 years). Approval for H-1B sponsorship of an H-1B petition does not guarantee approval for University sponsorship of a petition for US permanent residence. University departments should not at any time make an offer or agreement to petition for a permanent residence for any prospective employee during the recruitment process, interview session or with the offer of employment.

DETERMINING DEPARTMENTAL NEEDS

When making arrangements for international visitors, be aware that USCIS law prohibits employers from making payments to visitors without work authorization. These regulations are in effect even if the visitor is only on campus for a brief lecture or appearance.

This policy manual will address the complexities of immigration regulations for visiting academic faculty. Each department is responsible for ensuring full compliance of University policy before an offer of employment is executed.

Informal Visit (*See Chapter III: Section D*)

- B-1/B-2 (or WB/WT, if applicable)

Short-term Appointment (*See Chapter III: Section B, D, and E*)

- B-1 (WB)
- J-1 Short-term Scholars (6-month maximum)
- J-1 Visiting Scholar (5-year maximum)

- TN (Citizens of Canada and Mexico, renewable annually for 1 year)

Long-term Appointment (Temporary Positions) (See Chapter III: Section F & G)

- H-1B Temporary Worker (6-year maximum*)
- O-1 Alien of Extraordinary Ability

*1 year incremental extensions are possible for those whom NCA&TSU has filed a petition for permanent residence if that petition was made more than 365 days previous to the expiration of the final year of H1B status.

Permanent Appointment (See Chapter III: Section H)

- PR; US Permanent Resident (Green Card)

Student Graduating from a US College or University (See Chapter III: Section A-2 & B-2)

- Graduating students may be eligible for F-1 Optional Practical Training or J-1 Academic Training, depending upon their current visa classification. Students must discuss employment eligibility under F-1 and J-1 status with an International Advisor at the school from which they are graduating.

APPROVED ACADEMIC TITLES AT NCA&TSU

The academic titles noted below do not represent an inclusive list of all the positions for which NCA&TSU will act as the immigration sponsor for foreign nationals.

Academic titles may not be used for appointments in administrative or other nonacademic units. The following academic titles are primary titles and all appointments thereto are approved pursuant to University policies.

Some of these titles may be modified by the terms *adjunct*, *acting*, or *visiting*. Refer to EPA Salary Administration for additional position title details.

Professor	Teaching Associate
Associate Professor	Visiting Fellow
Assistant Professor	Visiting Scholars
Instructor	Visiting Scientist
Lecturer	Senior Scholar
Senior Scientist	Research Associate
Postdoctoral Associate	Postdoctoral Fellow

VISA CATEGORIES – EMPLOYMENT SPONSORSHIP AT NCA&TSU

(Short Descriptions of Visas)

B1 Visitor for Business

POSSIBLE INCOME FROM US SOURCE	B-1: Honorarium ¹ and/or reimbursement for travel and subsistence, possible, but no salary
ELIGIBILITY CRITERIA	Proof of academic or business purpose for visit to United States
MAXIMUM LENGTH OF STAY IN US	6 months – renewable to 12 months
ADVANTAGES	Quick and relatively easy to obtain and use many times; no government form or petition required
DISADVANTAGES	Limited stay in US; may not be paid a salary. Cannot stay for more than 9 days at any one University if being paid honoraria

WB/WT (Waiver Business)

POSSIBLE INCOME FROM US SOURCE	B-1: Honorarium ¹ and/or reimbursement for travel and subsistence, possible, but no salary
ELIGIBILITY CRITERIA	Only applicable if from designated visa waiver country
MAXIMUM LENGTH OF STAY IN US	90 days
ADVANTAGES	No need to visit US Consulate
DISADVANTAGES	No extensions or change of immigration status permitted. May not be paid a salary. Cannot stay for more than 9-days at any one university if being paid honoraria

J-1 Exchange Visitor (Professors / Researchers)

POSSIBLE INCOME FROM US SOURCE	Unlimited income for work on campus in pursuit of academic objective; off campus work permit difficult to obtain, especially in industry
ELIGIBILITY CRITERIA	Invitation to teach, lecture or conduct research; indication of adequate financial support for length of program
MAXIMUM LENGTH OF STAY IN US	Up to 5 years
ADVANTAGES	Relatively easy and quick to obtain; spouse may work (must apply to Immigration for authorization)
DISADVANTAGES	May be subject to 2 year home residence requirement based on funding, skills or as a medical graduate. Cannot change program objective.

¹Honoraria allowed only if specific criteria met. Visitors are limited to 5 such payments from U.S. institutions within the preceding 6 months, and appointment at NCA&TSU may be no longer than 9 days. More detail can be found in the Chapter IV: Section Honorarium Payments and/or Payroll and Taxes.

H-1B Temporary Worker

POSSIBLE INCOME FROM US SOURCE	Unlimited income for job specified in petition; no other income without new petition from new employer, or for new NCA&TSU position
ELIGIBILITY CRITERIA	Possession of professional degree and skills; indication that position to be filled requires professional skills and is temporary
MAXIMUM LENGTH OF STAY IN US	First period can be up to 3 years, renewable to total of 6 years; initial petition under NCA&TSU must be at least for one full year
ADVANTAGES	May have long term intent to immigrant; not subject to home country residence requirement
DISADVANTAGES	Lots of supporting documentation needed; must pay at prevailing wage and meet DOL requirements

TN (NAFTA)

POSSIBLE INCOME FROM US SOURCE	Unlimited income for specific job, not transferable to new position.
ELIGIBILITY CRITERIA	Possession of professional degree and skills for a position that is listed among the eligible professions on the TN list. Must be Canadian or Mexican citizen.
MAXIMUM LENGTH OF STAY IN US	1 year renewable, annually
ADVANTAGES	Canadians can obtain permission at US border post with appropriate documentation
DISADVANTAGES	Employer must file a petition with USCIS for Mexican citizens. Lengthy process.

O-1 Alien of Extraordinary Ability

POSSIBLE INCOME FROM US SOURCE	Unlimited income for job specified in petition; no other income without new petition from new employer, or for new NCA&TSU position/job.
ELIGIBILITY CRITERIA	Must submit evidence that applicant is among the top few in the world in area of specialization. Must be internationally recognized for contributions.
MAXIMUM LENGTH OF STAY IN US	First period up to 3 years, renewable in 1 year increments afterwards.
ADVANTAGES	May be an option for those who are not eligible for H-1B.
DISADVANTAGES	Lots of supporting documentation; approval based on a subjective review of applicant's standing in the field

Permanent Resident / Immigrant

POSSIBLE INCOME FROM US SOURCE	No restrictions
ELIGIBILITY CRITERIA	Outstanding professional background or professional skills for particular positions when US workers not available
MAXIMUM LENGTH OF STAY IN US	Indefinite; Naturalization optional after 5 years
ADVANTAGES	No need for work permits or extensions of stay; free to make long term plans to stay in the US
DISADVANTAGES	Extensive time, effort, documentation needed

CHAPTER III

EMPLOYMENT SPONSORSHIP FOR FOREIGN NATIONALS

A. F-1 Student

1. F-1 On-Campus Employment

F-1 students in lawful status with a current Form I-20 issued by the International Students and Scholars Office (ISSO) at North Carolina A&T State University and enrolled full-time may work up to twenty (20) hours per week on campus while school is in session. Payment for employment must be received through NCA&TSU Payroll.

An F-1 student does not need specific written employment authorization from ISSO or USCIS; the approved Form I-20 through NCA&TSU documents employment eligibility. However, each department must provide documentation of employment to ISSO to provide *confirmation* of employment so that the F-1 students file can be updated and documented to ensure compliance with the requirement that the student only work 20 hours as regulated by the F-1 visa status. Full-time enrollment is required during the Fall and Spring semesters. On-campus employment may be full-time (40 hours per week) during summer and winter breaks, if the student is not registered for courses during the summer but pre-enrolled or intend to enroll for the Fall. Employment is restricted to 20 hours per week if the student is enrolled during the summer session. In addition, employment is limited to NCA&TSU hiring departments/offices/facilities (e.g., paid through NCA&TSU Payroll).

F-1 students holding a half-time teaching/research assistantship on campus are considered to be working 20 hours a week. Students should not accept additional appointments, supplemental pay, or any additional pay for hours worked beyond the 20 hour per week maximum. ***It is the hiring department's responsibility to coordinate all employment activity for each F-1 student employed and to confirm with the student if concurrent employment exists with another university department.*** If the student confirms concurrent employment with another university department, each department must document the number of hours the student is eligible to work in their respective area and ensure the student does not earn more than a total 20 per week. In addition, if one department employment obligation requires a minimum of 20 hours per week, the employment must be terminated for the current student and can be offered to another student eligible to work a full 20 hours per week. (Note: An F-1 student with a sponsorship from a university department for tuition/fees, stipend and insurance, with the requirement of 20 hours per week, is not eligible to accept additional employment with another university department. The terms of their

educational funding and certification are guaranteed by the sponsorship support of the university department listed on the Form I-20.)

An academic department that allows an F-1 student to work beyond the 20 hours per week limit is in violation of federal regulations and causes the student to be out-of-status with the USCIS. The employment will be terminated immediately (with a loss of tuition remission and health insurance if a TA or RA) and the student may have to leave the U.S. The University can be penalized, including the loss of authorization to support foreign national students and employees.

2. F-1 Off-Campus Employment

Only the ISSO advisor should provide documentation to authorize an F-1 student to engage in off-campus employment. Any other university personnel who authorizes an F-1 student to engage in off-campus employment is in violation of the University's policies and will be subject to disciplinary action, up to and including dismissal.

USCIS defines some type of off-campus employment as "extended on-campus employment." In such cases, USCIS requires that the location be directly associated and/or affiliated with the University's established curriculum and related to contractually funded projects at the post graduate level through North Carolina A&T State University. This type of employment requires specific documentation. The employment must be an integral part of the student's educational program. For this type of employment, the F-1 student must obtain written authorization from ISSO **BEFORE** engaging in employment. The academic advisor is required to complete the Extended On-Campus Employment Form, issued by the ISSO.

Students in F-1 status must have explicit written work authorization from either ISSO or USCIS before engaging in any off-campus employment. An F-1 student may qualify to obtain permission to work in either of the following:

- *Severe Economic Hardship*
- *Curricular Practical Training (CPT)*
- *Optional Practical Training (OPT)*

Optional Practical Training (OPT) is a benefit given to F-1 students in lawful status. This benefit allows for a maximum of 12-months of off-campus employment (i.e., graduating or submitting thesis or dissertation to the Graduate School, whichever is earlier), prior to completion, or a combination of both. One year of OPT can be requested after each degree level (Bachelor, Master and Doctorate). OPT is not employer specific, but **is limited only to a temporary position in the major field of study identified on the current I-20.**

If an academic department wishes to employ an F-1 student with OPT employment authorization the student becomes subject to all University

employment policies and procedures. The department must follow the guidelines to hire the F-1 OPT student for temporary employment as outlined in University policies. Furthermore, the sponsoring academic department must follow the appropriate procedures to employ the student beyond the 12 month period authorized (maximum authorization). It is the obligation of the sponsoring department to consult with the Department of Human Resources and/or International Students and Scholars Office prior to extending employment to the F-1 student beyond the period of employment eligibility as indicated on the EAD card.

An F-1 visitor cannot be employed in a tenure track position: their visa status is considered temporary; there is no immigrant (permanent) intent permissible under this visa.

I-9 Compliance

Academic departments are required to refer all F-1 students with employment to the Student Employment Office in the Department of Human Resources on or before the end of the first work day to complete the Form I-9. Failure to do so will jeopardize the student's employment eligibility at NCA&TSU. **(See Chapter IV: Section A: Form I-9 Compliance)**

Payroll and Taxes

Academic departments are required to provide the F-1 student with the Foreign National Information Form and refer the student to the Payroll Office to confirm if additional documents are required to ensure compliance with income tax and treaty regulations. (See Chapter IV: Section B: Payroll and Taxes) *A social security number and card is required for payroll and tax withholding purposes.*

B. J-1 Exchange Student

1. J-1 On-Campus Employment

Enrolled J-1 students holding a Form DS-2019 from North Carolina A & T State University are permitted to work on campus for 20 hours per week during the academic year and 40 hours per week during summer and winter breaks. If the student's Form DS-2019 is produced by another agency, that agency must give employment permission to work at NCA&TSU. ISSO coordinates all employment authorization for J-1 students working in any capacity at NCA&TSU. Payment for employment must be received through NCA&TSU Payroll.

Each department must provide documentation of employment to ISSO to provide *confirmation* of employment so that the J-1 students file can be updated and documented to ensure compliance with the requirement that the student is only working 20 hours as regulated by the J-1 visa status. Full-time enrollment is

required during the Fall and Spring semesters. On-campus employment may be full-time (40 hours per week) during summer and winter breaks, if the student is not registered for courses during the summer but pre-enrolled or intend to enroll for the Fall. Employment is restricted to 20 hours per week if the student is enrolled during the summer session. In addition, employment is limited to NCA&TSU hiring departments/offices/facilities (e.g., paid through NCA&TSU Payroll).

J-1 students are considered to be working 20 hours a week on campus if they hold a half-time teaching/research assistantship. Students should not accept additional appointments, supplemental pay, or any additional pay for hours worked beyond the 20 hour per week maximum. ***It is the hiring department's responsibility to coordinate all employment activity for each J-1 student employed and to confirm with the student if concurrent employment exists with another university department.*** If the student confirms concurrent employment with another university department, each department must document the number of hours the student is eligible to work in their respective area and ensure the student does not earn more than a total 20 per week. In addition, if one department employment obligation requires a minimum of 20 hours per week, the employment must be terminated for the current student and can be offered to another student eligible to work a full 20 hours per week. (Note: A J-1 student with a sponsorship from a university department for tuition/fees, stipend and insurance, with the requirement of 20 hours per week, is not eligible to accept additional employment with another university department. The terms of their educational funding and certification are guaranteed by the sponsorship support of the university department listed on the Form DS-2019.)

University departments that certify funding sponsorship for J-1 students (required for a student visa) must provide funding for a minimum of the first academic year. If the department is unable to continue with funding as certified, an official withdrawal of funding must be coordinated with ISSO at a minimum 3 months prior to the end of the academic year. Otherwise, sponsorship will be required by the department for the next academic year.

An academic department that allows a J-1 student to work beyond the 20 hours per week limit is in violation of federal regulations and causes the student to be out-of-status with USCIS. The employment will be terminated immediately (with a loss of tuition remission and health insurance if a TA or RA) and the student may have to leave the U.S. The University can be penalized, including loss of authorization to support foreign national students and employees.

2. J-1 Off-Campus Employment

Only the ISSO advisor should provide documentation to authorize a J-1 student to engage in off-campus employment. Any other university personnel who authorizes an J-1 student to engage in off-campus employment is in violation of

the University's policies and will be subject to disciplinary action, up to and including dismissal.

USCIS defines some type of off-campus employment as "extended on-campus employment." In such cases, USCIS requires that the location be directly associated and/or affiliated with the University's established curriculum and related to contractually funded projects at the post graduate level through North Carolina A&T. This type of employment requires specific documentation. The employment must be an integral part of the student's educational program. For this type of employment, the J-1 student must obtain written authorization from ISSO or program sponsor **BEFORE** engaging in employment. The academic advisor is required to complete the Extended On-Campus Employment Form, issued by the ISSO.

Students in J-1 status must have explicit written work authorization from either ISSO or program sponsor before engaging in any off-campus employment. A J-1 student only has one opportunity for employment authorization under Academic Training, regardless of how many degrees received. A J-1 student may qualify to obtain permission to work in either of the following:

- *Economic Hardship*
- *Academic Training*

J-1 students in a degree program are permitted an overall limit of 18 months academic training within their field of study. Post-doctoral training may last as long as 36 months, provided the student is qualified for employment in a postdoctoral position at North Carolina A & T State University.

I-9 Compliance

Academic departments are required to refer all J-1 students with employment to the Student Employment Office in the Department of Human Resources on or before the end of the first work day to complete the Form I-9. Failure to do so will jeopardize the student's employment eligibility at NCA&TSU. (See Chapter IV: Section A: Form I-9 Compliance)

Payroll and Taxes

Academic departments are required to provide the J-1 student with the Foreign National Information Form and refer the student to the Payroll Office to confirm if additional documents are required to ensure compliance with income tax and treaty regulations. (See Chapter IV: Section B: Payroll and Taxes) *A social security number and card is required for payroll and tax withholding purposes.*

C. J-1 Visiting Scholar / Researcher

Appointments

The purpose of this visa is for academic exchange and **may not be used for permanent tenure or tenure track positions**. Employment must be an academic appointment, unless not required as outlined below. Sponsoring department's are expected to confirm that the J-1 scholar hold an advanced degree and be well-recognized in their discipline. Foreign national graduate students should not be appointed to academic positions. Any exceptions to this policy must be approved by the Office of the Provost.

It is the sponsoring department's responsibility to ensure that the J-1 visitor reports to the International Students and Scholars Office upon arrival to the United States, prior to the begin date of employment activity at North Carolina A & T State University.

An academic department can sponsor a J-1 visitor in the following categories:

- Professors and Researchers:
 - The department may pay a salary and certify that the employment is in teaching or research and must have an academic appointment.
 - The department must confirm that the visitor holds an advance degree and reputable in the discipline.
- Short-term Scholars:
 - The department may pay for services and/or reimbursement for the visitor's expenses. A payment of any type (except expense reimbursement) will require the completion of the Form I-9. In addition,
 - The visiting scholar/researcher is eligible for, but not required to receive an academic position.
- Specialists:
 - The department may pay a salary.
 - The department must provide documentation that the visitor is an expert in field of specialized knowledge, coming to the US to observe, consult or demonstrate.

Financial Support Required

The sponsoring department must provide financial support for the entire length of stay requested. The minimum amount of financial support must be verified through ISSO prior to the commitment of sponsorship with the visiting scholar/researcher.

Insurance

University sponsorship may not include health benefits. Federal law requires that all J-1 exchange visitors and their dependents maintain health and accident insurance. All visiting scholars/researchers must coordinate proof of insurance with ISSO.

NCA&TSU insurance **does not meet *all* minimum requirements** as established by USCIS.

Off-Campus Employment, Consulting and/or Lecturing

No academic department should sponsor or schedule off-campus employment activity for J-1 visitors prior to receiving an official approval notice from the International Students and Scholars Office at NCA&TSU.

J-1 visitors are limited by government regulations to employment in their sponsoring department at NCA&TSU. Occasional lecturing or consulting at other non-profit institutions may be allowed by the US department of State regulations, if such activity is in-line with the visitor's original objectives in coming to the U.S. The department and the visitor must consult with ISSO for eligibility requirements in advance (prior approval is required).

Site of Employment Activity

The sponsoring department must report additions to or changes in work site (site at which work will be conducted by the visitor) to the ISSO within 10-days of the change. If the J-1 visitor will be working at another physical location, the ISSO must report the address of the activity site in the Student and Exchange Visitor Information System (SEVIS).

It is absolutely critical that the ISSO be informed of any of the above described changes. As the federally designated officers for NCA&TSU J-1 Exchange Visitor Program, this office is required to ensure that the University is in compliance with regulations governing the program.

I-9 Compliance

Academic departments are required to complete a Form I-9 with the visiting scholar/researcher on or before the end of the first work day, except for visitors to only receive expense reimbursement. Failure to do so will jeopardize the visitor's employment eligibility at NCA&TSU. (See Chapter IV: Section A: Form I-9 Compliance)

Payroll and Taxes

Academic departments are required to provide the J-1 visitor with the Foreign National Information Form and refer the visitor to the Payroll Office to confirm if additional documents are required to ensure compliance with income tax liability and treaty regulations. (See Chapter IV: Section B: Payroll and Taxes) J-1 visitors and researchers can be paid a salary. *A social security number and card is required for payroll and tax withholding purposes.*

D. B-1 Visa Holder (or WB, Waiver-Business)

Appointments

The University may employ a B-1 visitor as a speaker or short-term researcher/scholar who plans to visit for a short period of time in the U.S. (normally 6 months or less). The B-1 visitor visa request is not for use by the university department that offers any type of position that relates to a formal academic appointment for a term or longer.

Visitors from some countries can enter the United States without securing a visa from the U.S. Consulate. These visitors may request WB (waiver business) or WT (waiver tourist) status upon entry. Both the WB and WT are limited to 3 months with no extensions or change of status possible. If the visit will be longer than 3 months, the department should recommend the visitor seek to obtain the B1 or B2 visa stamp, or consider another visa classification. Citizens from the following countries are eligible for WB/WT status:

Andorra	Australia	Austria	Belgium	Brunei
Denmark	Finland	France	Germany	Iceland
Ireland	Italy	Japan	Liechtenstein	Luxembourg
Monaco	Netherlands	New Zealand	Norway	Portugal
San Marino	Singapore	Slovenia	Spain	Sweden
Switzerland	United Kingdom			

Reimbursement of Expenses

B-1 visitors may not receive academic appointments at NCA&TSU that requires payment of a salary. The department can pay the reimbursement of expenses (i.e., travel, food and lodging) to the B-1 visitor. These expenses should be outlined prior to the approval of the visit and budget funding must be confirmed available and approved. ***Because B-2 visitors (Visitor for Pleasure) are not eligible for payment of a salary or reimbursement of expenses, departments should not offer or commit to such.***

Honorarium

The department can offer an honorarium for the visitor, as long as the visit to NCA&TSU is not longer than 9 days and the visitor has not accepted honoraria from more than five institutions or organizations within a six-month period. B-2 visitors may be eligible for an honoraria payment, if the visit meets the same eligibility criteria.

Upon arrival to the U.S., the university department must complete all requirements as outlined in Chapter IV: Section C: Honorarium Payments to Foreign Nationals. All information must be submitted to the University Accounting Office.

Letter of Invitation

The university department must provide a letter of invitation from NCA&TSU to the B-1 visitor for submission to the U.S. Consul and to the immigration inspector at the point of entry into the U.S. The letter must state the purpose of the visit and also state that no salary will be paid by NCA&TSU (reimbursements and payment of an honorarium are acceptable). A copy of this letter should be submitted to ISSO for review and file management.

The university department should not in any way guarantee approval of the B-1 visitor's visa. It is at the sole discretion of the U.S. Consulate to grant any visa.

Arrival to U.S. / NCA&TSU

The sponsoring department is responsible for ensuring that the visitor reports to the Department of Human Resources to present the passport and entry permit (Form I-94) upon arrival to NCA&TSU. Human Resources will verify the visa classification and eligibility to participate in the activity of invitation.

Insurance

B-1 and/or B-2 visitors (WB/WT visitors) are not eligible for NCA&TSU health benefits.

Change of Status Options

Applications for change of status from B-1 or B-2 to F-1 made by persons who either have already applied to US schools from abroad or who apply for a change of status shortly after entry to the US are routinely denied. However, if your B-2 visa is marked "prospective student," the change of status may be approved for F-1 visa status.

For purposes of employment, North Carolina A&T State University will not sponsor a change of status application for B visitors.

I-9 Compliance

Academic departments are required to complete a Form I-9 with the visitor on or before the end of the first work day, except for visitors to only receive expense reimbursement. Failure to do so will jeopardize the visitor's employment eligibility at NCA&TSU. (See Chapter IV: Section A: Form I-9 Compliance)

Payroll and Taxes

Academic departments are required to provide the B-1 visitor with the Foreign National Information Form and refer the visitor to the Payroll Office to confirm if additional documents are required to ensure compliance with income tax and treaty

regulations. (See Chapter IV: Section B: Payroll and Taxes) B-1 visitors and researchers can not be paid a salary. *A social security number and card is required for payroll and tax withholding purposes.*

A B-1/B-2 (WB/WT) visitor cannot be employed in any position classification: their visa status is considered temporary; there is no immigrant (permanent) intent permissible under this visa.

E. TN – NAFTA (North American Free Trade Agreement – Canada or Mexico)

A TN visa allows a Canadian or Mexican citizen to enter the U.S. temporarily to engage in activities at a professional level. The TN category is only available to citizens of Canada or Mexico. These professional activities have been defined to require at least a baccalaureate (bachelor's) degree or appropriate credentials demonstrating status as a professional. *Note: Each department is responsible for verifying the prospective visitor's credentials before providing a recommendation of sponsorship to the College Dean and Office of the Provost.*

Based on the University academic policy for employment, all TN visitors to be employed at NCA&TSU must have the appropriate degree level to comply the requirements for the position. *University departments must contact the Foreign National Administrator in Human Resources because the requirements and procedures differ between Mexican and Canadian citizens.*

Appointments

The hiring department must certify that the TN visitor meets the University requirements to fill a “temporary” academic position. This includes confirmation that the University has a need for this candidate and funding is available for the one year term of the TN visa. An official request of sponsorship must be submitted to the College or School Dean for review and approval. *The College or School Dean will forward the approved request to the Office of the Provost for review and final approval.*

A TN visitor cannot be employed in a tenure track position: their visa status is considered temporary and based on one year extensions; there is no immigrant (permanent) intent permissible under this visa.

The University will only sponsor TN visitors for “temporary” *academic* positions, with the exception of *temporary* coaching staff. In addition, the TN visitor must have a letter of sponsorship from NCA&TSU and enter the U.S. under the offer of employment from our University. If the TN visitor enters the U.S. under another employer's request for sponsorship, the visitor will not be allowed to work at NCA&TSU.

A TN visitor can apply for permission to stay up to one year. There is no maximum limit on the number of extensions at this time, provided the stay remains “temporary”

in nature. If the hiring department intends to extend the employment of the TN visitor beyond the initial one year of sponsorship and an additional one year extension (2 years), the hiring department must contact the Foreign National Administrator to discuss long term visa categories for employment on behalf of the visitor. This request will be coordinated with the College Dean and the Office of the Provost.

Department Process

The University department must acquire the appropriate signatures of approval from the *College or School Dean* and the *Office of the Provost* prior to providing the TN visitor with the letter of sponsorship (offer of employment). In addition, the department must certify that funding for this position is secure for the period of one year.

Cost of Visa

It is the responsibility of the TN visitor to complete the required USIC forms and pay the application fee.

Arrival at NCA&TSU

The TN visitor (visa holder) must report to the Department of Human Resources for review and copying of immigration documents. The Foreign National Administrator will review and copy the documents, verify that the documents have been processed correctly and verify that the individual is authorized to work at the University.

I-9 Compliance

Academic departments are required to complete a Form I-9 with the visitor on or before the end of the first work day, except for visitors to only receive expense reimbursement. Failure to do so will jeopardize the visitor's employment eligibility at NCA&TSU. (See Chapter IV: Section A: Form I-9 Compliance)

Payroll and Taxes

Academic departments are required to provide the TN visitor with the Foreign National Information Form and refer the visitor to the Payroll Office to confirm if additional documents are required to ensure compliance with income tax and treaty regulations. (See Chapter IV: Section B: Payroll and Taxes) TN visitors can be paid a salary. *A social security number and card is required for payroll and tax withholding purposes.*

F. O-1

The O-1 is a nonimmigrant employment-based visa for aliens of extraordinary ability in the sciences, education, business or athletics. It is an employer based petition. The University will be required to show evidence of the alien's extraordinary ability. This

is a temporary visa for nonimmigrant residence of a foreign country which has no intention of country abandonment.

Appointment

The hiring department may elect to submit a recommendation to petition for an O-1 visa for qualified individuals holding academic positions who may not otherwise qualify for H-1B Temporary Worker status. The individual must clearly meet the *extraordinary ability* requirement as defined in this section.

Department Process

The chairperson of the hiring department must submit an official letter of recommendation to the respective College or School Dean for initial review and approval. The College or School Dean must submit the recommendation with supporting documentation to the Office of the Provost for final determination. This decision will be approve the request will be based on the best interest for the University. If the Office of the Provost approves the recommendation to petition for the O-1 visa, the hiring department will contact the Foreign National Administrator to initiate the application process.

Term of Petition Request

An initial O-1 petition can be filed for up to a 3-year maximum employment period. Subsequent extensions may be for no more than one year at a time. There is no limit to the number of such extensions. The University department must ensure that the employment contract or offer of employment is for no more than the terms stated above. *In the case of O-1 extensions beyond the initial term approved, the contract of employment can not be offered for more than one year extensions.* The term of employment must be consistent with the federal regulations as established for O-1 visa extensions.

Cost of Visa

It is the responsibility of the requesting department to pay all fees associated with the application process and petition for the O-1 visa (as petitioned by the University).

O-1 Qualifications

- Employment in an academic position requiring a Ph.D. The employment letter must specify the dates for which work authorization is being requested; no more than three years on initial offer; one year on all subsequent petition extensions.
- A written consultation / advisory opinion from a peer group, or from recognized expert(s), in the field in the alien's area of ability, i.e. letters of support from renowned researchers (as evidenced by their curriculum vitae and publication list) that attest to the qualifications and value of work to be done by the O-1 foreign national.

- Evidence that the professor or researcher is recognized nationally and internationally as outstanding in his or her academic field. The University requires evidence consist of at least four (more than four recommended) of the following [Note: Evidence of publications is required to show national or international acclaim.]:
 1. Receipt of a major, internationally recognized award, such as the Nobel Prize or major prizes or awards for outstanding achievements in the academic field;
 2. Membership in associations in the field which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
 3. Published (citation) material in professional or major trade publications or major media about the O-1 beneficiary, relating to their work in the field in which classification is being sought, which shall include the title, date, and author of such published material and any translation;
 4. Participation on a panel, or individually, as judge of the work of others in the same or an allied field;
 5. Authorship of scholarly books or articles, in journals with international circulation, in the field;
 6. Original scientific or scholarly research contributions to the academic field;
 7. Evidence of previous employment in a critical or essential capacity for organizations having distinguished reputation (e.g. NSF or Department of Defense research grants);
 8. Evidence of high salary or other significantly high remuneration for services in relation to the others in the field, evidenced by contracts or other reliable evidence.

Change of Status

Individuals who are subject to the two year home country residence requirement under previous J-1/J-2 classification, are eligible to apply for the O-1 visa. Such individuals, are not eligible for a change of status within the U.S., but must apply for the O-1 visa abroad, and re-enter the U.S. in O-1 status.

Arrival at NCA&TSU

In the event the O-1 foreign national is required to travel abroad and re-enter the U.S. in legal O-1 status, they must report to the Department of Human Resources for verification of immigration documents. The Foreign National Administrator will review and copy the documents, verify that they have been processed correctly, and verify that the individual is authorized to work at the University.

The sponsoring department should not allow the O-1 visitor to report to work without receipt of the official notice of clearance from the Department of Human Resources.

I-9 Compliance

Academic departments are required to complete a Form I-9 with the O-1 foreign national on or before the end of the first work day. Failure to do so will jeopardize the visitor's employment eligibility at NCA&TSU. (See Chapter IV: Section A: Form I-9 Compliance) **The visitor may not begin employment until the official approval of authorization is received from USCIS.**

Payroll and Taxes

Academic departments are required to provide the O-1 visitor with the Foreign National Information Form and refer the visitor to the Payroll Office to confirm if additional documents are required to ensure compliance with income tax and treaty regulations. (See Chapter IV: Section B: Payroll and Taxes) O-1 visitors are paid a salary. *A social security number and card is required for payroll and tax withholding purposes.*

An O-1 visitor cannot be employed in a tenure track position: their visa status is considered temporary and based on annual extensions; there is no immigrant (permanent) intent permissible under this visa.

G. H-1B Temporary Worker of Distinguished Merit and Ability

The H-1B Temporary Worker visa allows foreign nationals to work in the United States in *specialty occupations* for a period of up to six years. Each application can be made for a period up to 3 years (See Chapter III: Section G: Appointment). The application must be filed by NCA&TSU; an individual cannot gain an H-1B visa on his or her own. NCA&TSU must obtain approval of both the Department of Labor (DOL) and the United States Citizenship and Immigration Service (USCIS).

An H-1B visa is required for an appointment to a tenure track position and the University reserves the right to determine Permanent Residency sponsorship.

When applying for the H-1B status for a foreign national, NCA&TSU must establish that the foreign national will be working temporarily at the University in a specialty occupation and possesses the required academic credentials and ability specified by the academic position requirements. *The University must also show that such employment is not at the expense of displacing U.S. Citizens, Naturalized Citizens, and/or Permanent Residents of the U.S.*

For purposes of employment, the hiring department has the burden to meet federal requirements to sponsor and apply for H-1B visa status on behalf of a foreign national. The complexity of the requirements for an H-1B visa requires the hiring department to process job vacancies with the anticipation of foreign national applicants. Each department must therefore comply with the sectional procedures listed below. ***Penalty: In extreme cases, where the department continuously fails***

to follow the hiring guidelines outlined, the Office of the Provost may not allow the department to request or sponsor foreign nationals.

The Foreign National Administrator will work directly with the NCA&TSU department, *not the applicant*, in obtaining and processing the required application documents for H-1B status at the University.

Recruitment

The sponsoring department is responsible for following all recruitment actions as outline in this policy (Refer to Chapter 1: Recruitment Practices, Section A – Search Proposal: Search Committee Selection Requirements) and the official policy mandated for academic affairs departments.

Support documentation will be required before the Department of Human Resources submit the petition for H-1B.

Also refer to the below section – H-1B Dependent Employer & Willful Violator: Additional Attestations of the University.

Terms of Employment

The hiring department may not certify or promise Permanent Residency to a *prospective* H-1B employee during the recruitment process, interview meeting, selection process and acceptance of employment. The basis of permanent residency should not be the basis to secure employment with any candidate, including the defining factor for acceptance of employment.

The decision to file a petition for Permanent Residency on behalf of a foreign national is at the discretion of the Provost. Selection of a foreign national in employment positions does not guarantee nor commit the University to petition for *permanent residency based on employment*. The hiring department shall not offer permanent residency as a term for employment acceptance or a guarantee for the foreign national who accepts a position.

Appointment

The hiring department can petition for H-1B visa status for *academic* positions that satisfy the required degree level in the area of specialization (position) as defined by the University. The offer of employment must be discussed with the College or School Dean to clarify the Universities responsibilities of sponsorship, funding liability and terms of employment to ensure compliance with University policies and the USCIS regulations.

The initial offer of employment must be for no less than one year and no more than three years. The University will *not* submit an *initial* application for H-1B for less

than a one year term. An extension of status may be for less than one year, but not less than 6 months, with *sufficient justification* and the *approval* from the Provost.

H-1B tenure track appointment offers may only be processed in one or two-year increments. Thus meaning, the sponsoring department can not offer appointments and/or request to petition for employment authorization for a term longer than two years at a time.

The University will not file an H-1B request for a time period longer than the approved offer of employment (contract, if applicable) and/or funding resources availability.

The department must ensure that the determination of the foreign national's assignment is "temporary" specialty occupation. In addition to receipt of official documentation from the prospective H-1B employee to satisfy the required academic/training credentials and abilities to assume the position and that the foreign national can maintain employment as outlined.

The University department must receive the appropriate approval from all **grant funded** program sponsors to certify that a foreign national can work on the project and be paid with program funds. The department must provide documentation to show that the grant program sponsor agrees to the employment of the foreign national. *It is the responsibility of the College or School Dean to ensure that the sponsoring department maintain full compliance with the grant guidelines and act on the best interest of the University. The hiring department must also receive clearance from the Assistant Vice Chancellor of Research Administration to ensure management of the export control.*

The hiring department will be required to provide documentation certifying the availability and approval of financial resources to cover all expenses (including salary as stated in the offer letter) involved with filing the petition and that the source of funds can be used for said purposes.

Educational Credentials

The sponsoring department must collect, review, and certify the required educational credentials from the prospective H-1B employee. These documents must satisfy the educational (academic) qualifications and credentials as *advertised* for the position.

If the H-1B employee has credentials in a language other than English, it is the H-1B employee's responsibility to provide an official evaluation from an accredited U.S. credential evaluation agency of the document in question. The employee is responsible for the cost of the evaluation. *The University will not incur the cost of this requirement.*

Cost of Visa

All cost involved with the H-1B petition are to be paid by the sponsoring University department. Personal funds cannot be accepted from the beneficiary or any University employee. Checks must be drawn on active University accounts. The sponsoring department must provide University processed checks for the following fees:

1. I-129 Nonimmigrant Worker Application (mandatory fee) - \$320.00
2. Fraud and Detection Fee (mandatory fee) - \$500.00 (applicable for initial and change of employer H-1B petitions)
3. I-907 Premium Processing Application (optional fee) - \$1,000.00

PREMIUM PROCESSING is an optional fee which allows employers the opportunity to process and receive an adjudicated decision (approval/additional information needed/denial) within a 15 day period of submission on H-1B applications as an expedited service. The expedite service only promises a response to the petition within 15 days, not an approval. If for some reason, the USCIS decides that additional information is required, a “request for evidence” (RFE) may be the response. Approval is not guaranteed within 15 days – just a response. If an RFE is requested, the hiring department will be notified. The 15-day clock will start again when USCIS receives the requested additional evidence.

It is the University’s obligation to pay the \$1,000 premium processing fee for the H-1B petition. Allowing the beneficiary to pay the premium processing fee changed the conditions of meeting the prevailing wage and actual wage for the petition. – Effective November 2004.

The USCIS will not allow employers to begin the employment of nonimmigrants without first having the proper employment authorization documents verifying eligibility. If the hiring department wishes to employ a nonimmigrant who has limited or no legal documentation to begin employment prior to the six months or so required for regular application processing time, the department should consider the premium processing option.

Premium processing is not a mechanism for expediting the North Carolina Department of Labor Prevailing Wage Request or the Federal Department of Labor Condition Application. These agencies do not offer an expedited processing service.

Determining Salary

The hiring department must determine the exact salary before agreeing to sponsor an H-1B. The salary must be equal to or greater than the prevailing wage.

It is the department’s responsibility when determining the salary to understand the salary limits for the position, and the salary amount required for the prevailing wage. The hiring department cannot hire a worker for an H-1B visa, when the University

cannot meet the salary demand of the prevailing wage. The H-1B must be paid at least what the University pays similarly qualified U.S. workers. The Department of Human Resources will provide salary market data and related analysis, upon request.

The hiring department should anticipate foreign national applicants for employment in University academic positions. The position posted should include a salary comparable to the University standards of pay for persons in similar positions and that in the range of the prevailing wage. If the hiring department is unable to comply with both salary requirements, then the University will not be able to meet the salary requirements for sponsorship. The H-1B visa therefore could not be an option.

Note: The rate of pay per year only includes money paid to the worker. The salary does not include a cash value of benefits given to an employee.

Actual Wage Verification

Before NCA&TSU submit an H-1B petition on behalf of the beneficiary, U.S. law requires that we document that the employee will be paid the “actual wage” for his or her position. The employee will be considered to be receiving the “actual wage” if his or her salary falls within (or above) the range of wages currently paid to comparable employees in the same department. “Comparable” employees are defined as those with similar background and similar job responsibilities.

In the H-1B Request to Petition packet the department head is required to list all persons currently employed in the department with the same job classification as the potential H-1B employee. The department head must specify which employees are considered comparable. If the employee’s job classification is not comparable, the department head must provide a statement to specify why there is no comparison in the job classification. The Department of Human Resources should be contacted for assistance with job evaluation and classifications.

If the prospective H-1B employee’s salary does not fall within or above the range of salaries of the comparable employees, the University can not submit an H-1B petition for this employee and he/she may not be employed at North Carolina A & T State University. If the department expects to have more than one H-1B employee, it is requested that the same criteria for comparison be used for each Actual Wage Calculation.

The department must follow the established Department of Labor guidelines that certain criteria may be used to eliminate other employees from comparison.

Valid Criteria (for stating employee is not comparable):

- Employee has more relevant work experience than H-1B employee
- Employee has more responsibility than H-1B employee (including degree from more “prestigious” institution)
- Employee does not work same number of hours

Not Valid:

- Funded by different grant or funds
- Different area of research
- Employee demanded more salary
- A&T salary freeze (past or present) resulted in different pay

Prevailing Wage

The Immigration and Nationality Act (INA) requires that the hiring of a foreign worker will not adversely affect the wages and working conditions of U.S. workers working in the occupation in the area of intended employment. *To comply with the statute, the Department of Labor regulations require the wages offered to a foreign worker must be the prevailing wage or the actual wage paid by the employer to workers with similar skills and qualifications, whichever is higher.*

The hiring department will use the resources listed below to determine a range for the prevailing wage of the position to be filled:

1. Foreign Labor Certification Data Center On-line Wage Library

Majority of the University occupational prevailing wages can be determined through the use of the On-line Wage Library (OWL) found on the Foreign Labor Certification Data Center website (<http://www.flcdatacenter.com/>) to select the prevailing wage for the occupation.

Use the FLC Wage Search Wizard to:

- Select the state and geographic area from the drop-down lists.
- Select the occupation using the first 6 digits of the O*NET-SOC code, OR
- Select the occupation from the drop-down list or enter the title in the key word search box.
- Select a data year.
- Select a data source.
- Click on Search.
- Print the prevailing wage verification page.

If the department is unable to clearly match the University's occupation (job duties, education, experience level, supervisory skills), the department must use the O*NET on-line resource process method to determine the prevailing wage. The O*Net should be used for those atypical occupations that require extensive knowledge for a position (i.e., higher degree, experience, supervisory and/or licensure levels).

U.S. Department of Labor Condition Application (LCA)

The University (hiring department) is required to first obtain documentation from the Department of Labor that it has filed a labor certification application (LCA), before

filing an H-1B application. This certification requires the University to make several attestations to the Department of Labor in order to prove that the H-1B employee is being appropriately treated (wage; working conditions; strike, lockout or work stoppage; and notice).

Each H-1B employee must be supplied with a copy of the certified LCA. The Foreign National Administrator will manage this process to ensure compliance prior to the filing an H-1B application to the USCIS.

DOL regulations require that the University meet or exceed a determined minimum prevailing wage and that the employee be compensated with employment benefits equivalent to that of any other employee in the same position and level. *Note: If other departmental employee's listed on the Actual Wage Verification Form receive University benefits – the H-1B visitor must be offered the same benefit privileges as those in the same position and level.*

- LCA Attestations

1. Wage

- The University must attest that H-1B employee will be paid wages equal to or higher than those paid to all other individuals with similar experience and qualifications.
- The University must continue to pay an H-1B employee, even if they are between projects (nonproductive times).
- The University must offer similar raises and bonuses to an H-1B worker to those that you offer to U.S. workers (this action will also require the sponsoring department to file an 'amendment' to USCIS showing a change in salary for the foreign national worker).

2. Working Conditions

- The University must attest that the employment of H-1B foreign nationals in the named occupation will not adversely affect the working conditions of U.S. workers similarly employed.

Note: The University is considered to adversely affect U.S. working conditions when we:

- (a) pay foreign nationals less than U.S. workers
- (b) offer fewer benefits to foreign nationals
- (c) implement stricter work requirements on foreign nationals without offering them higher pay

3. Strike, Lockout and Work Stoppage

- The University must attest that on the date the LCA is signed there is not a strike, lockout or work stoppage occurring.
- The University must notify DOL within 3 days if one of these events occurs after the LCA is submitted
- The event must be over before the LCA can be used to support an H-1B application filed by the University.

4. Notice

- The University must attest that, as of the filing date, notice of the labor condition application has been provided to workers employed in the named occupation.
- The University must physically post the LCA notice of the application to all other workers in a conspicuous location where the H-1B worker will be employed.
- *North Carolina A & T State University requires the hiring department post a hard copy of the LCA in a visible, public location of the department.*
- The notice shall be given within 30 days before the date of the LCA is filed.
- The notice must remain posted for 10 days

If the hiring department fails to meet LCA conditions, USCIS will not approve petitions filed by the University for a period of at least one year.

Filing Timeline

It is recommended that the department consider the Department of Human Resources processing timeline when requesting an academic appointment and completing the foreign national's request forms. The department must complete the necessary request forms. **The forms must be submitted to the Foreign National Administrator in the Department of Human Resources with all supporting documentation at least six months prior to the anticipated start of employment.** The Foreign National Administrator must receive all required documentation before processing can commence (no exceptions).

The USCIS currently requires at least four (4) to six (6) months to evaluate and approve a H-1B application. Therefore, the department must plan in advance when hiring, especially for positions with foreign national candidates that will require an H classification. The department can choose to pay a \$1,000.00 fee to USCIS to expedite the application. However, this service known as premium processing does not affect the time the Department of Human Resources requires to process the initial steps of the application. Regardless of the type of service requested, once the USCIS approves the application, the Foreign National Administrator will provide the approval notice to the prospective employee.

The sponsoring department may not request to file an H-1B petition more than 6 months before the date of which the employee will actually begin employment. The USCIS will not accept such petition applications.

The Department of Human Resources requires a minimum of 45 days for internal processing of the departmental H-1B application request. There are multiple steps that must be followed prior to the submission of the H-1B petition to USCIS. The Foreign National Administrator *may* determine a lesser time period (no less than 35 days) needed to process the required documentation after review and receipt of all paperwork submitted by the hiring / sponsoring department. The department should

consider internal processing time when determining the H-1B employees employment begin date. *Note: The time for internal processing may be longer if all H-1B Request Forms and Supporting Documents are not received or returned for additional information.*

Change of Status

The hiring department should consult with the Foreign National Administrator to discuss situations in which change of status may be required in order to employ the foreign national. The change of status process may vary depending upon the foreign national's current visa classification, end date of current status, and legal status in the U.S.

The foreign national may be required to travel outside the United States to request an H-1B visa from the Embassy in their home country and re-enter the U.S. The hiring department may therefore be required to change the employment begin date. These factors should be considered prior to making an offer of employment.

Change of H-1B Employers (Portability)

There are cases where the University may offer employment to a foreign national who already holds an H-1B visa status with another employer, or in another position at NCA&TSU. The hiring department must not allow an H-1B employee to begin work at the University or in a new employment capacity until an official application for

H-1B status has been filed with the USCIS for employment with North Carolina A & T State University. Proof of filing is the USCIS receipt of the petition. If the H-1B hired falls under the portability classification, the Department of Human Resources will notify the hiring department and employee when the receipt notice arrives.

Note: A foreign national with H-1B status is not authorized to work for another employer until the employer files an independent application to request employment authorization at their company, institution or agency.

The H-1B must maintain employment with the prior employer until an official Notice of Receipt has been received by the University from USCIS. This verifies the application request submitted by the University is received and is awaiting adjudication.

The H-1B visa status does not offer a grace period to transition from one status to another. Upon the termination of employment with the approved employer, the H-1B does not have legal status in the United States, unless there is proof of a pending application with USCIS to change visa status or employer. **If the H-1B employee leaves employment prior to NCA&TSU receiving the Notice of Receipt, the H-1B is not in legal status and must leave the U.S. and re-enter in H-1B status with North Carolina A & T State University listed as the employer.**

The hiring department shall not allow the H-1B employee to begin work until an official clearance is received from the Foreign National Administrator.

Job Reclassification/Change in Pay and/or Work Location

The University must file an amended petition to reflect any material changes in the terms and conditions of employment, such as:

- Promotion or other change in job title or rank
- Substantial changes in job duties or responsibilities
- Any decrease in salary or benefits certified
- A substantial increase in salary or benefits certified
- Change in location of employment
- Change in total work hours or change in full-time/part-time employment status

The hiring department understands that no change to the H-1B employee employment can occur until an amended petition is submitted to the USCIS. This process will also require a new Labor Condition Application to reflect the changes.

- *Employment Changes within Same Department*
 - If there is a proposed change in employment within the same department at NCAT&SU, the hiring department must submit an *H-1B Change in Employment Form* to the Foreign National Administrator no later than 60 days prior to the proposed change in employment. If the Foreign National Administrator determines that a petition to amend the H-1B authorization is required, the petition must be submitted to USCIS before the employee can commence the proposed new duties, salary, supervision, etc. In addition, if the proposed change is deemed to be material, the hiring department will be asked to complete a new H-1B request packet, including a new appointment letter.
- *Employment for a New or Concurrent Hiring Department*
 - If the H-1B employee will commence employment with a new (or concurrent) department at NCA&TSU, a complete H-1B Request Packet, including a new appointment letter, is required from the new (or secondary) hiring department. The Foreign National Administrator will use this information to determine if the change is considered material and if a new H-1B petition will be required to amend the employee's work authorization.

Multiple Work Locations

A H-1B petition that requires services of the employee to be performed in more than one location must (1) include an itinerary with dates and locations of the work sites and projects and (2) be submitted to the USCIS with the application petition filed by the University.

The hiring department will be required to submit the itinerary with the H-1B Request Packet.

Termination of Employment

The hiring / sponsoring department is required to notify the Foreign National Administrator immediately if the department decides to discontinue the H-1B process for the foreign national or if circumstances beyond the Universities control arise during the process that preclude the prospective employee from obtaining H-1B status.

The department must discuss the mandatory actions and requirements with the Foreign National Administrator prior to terminating H-1B employment.

Liability for Transportation Costs

The USCIS requires the University to provide reasonable costs of return transportation to the foreign national home country (or last place of legal residence) if the foreign national is dismissed from employment before the end of the approved H-1B work authorization. If the H-1B employee does not intend to return to their home country or last place of residence, then the University is not required to provide means of reasonable transportation.

The University will not provide monetary funds to the foreign national, but will purchase the reasonable (airfare) transportation for the dismissed employee upon clarification of intent to return to their home country. The H-1B will be required to sign a document of certification and waiver of receipt.

The University holds no liability if the H-1B employee voluntarily terminates his or her employment prior to the expiration of the validity of the petition (the foreign national was not dismissed by the University).

I-9 Compliance

Academic departments are required to complete a Form I-9 with the H-1B beneficiary on or before the end of the first work day. Failure to do so will jeopardize the visitor's employment eligibility at NCA&TSU. (See Chapter IV: Section A: Form I-9 Compliance) **The H-1B employee may not begin employment until the official approval of authorization is received from USCIS.**

Payroll and Taxes

Academic departments are required to provide the H-1B employee with the Foreign National Information Form and refer the visitor to the Payroll Office to confirm if additional documents are required, as it relates to tax income and treaty regulations. (See Chapter IV: Section B: Payroll and Taxes) H-1B employees must be paid the

salary as certified on the Labor Condition Application. *A social security number and card is required for payroll and tax withholding purposes.*

Criminal Background Investigation Check

The University requires all of its employees to complete a [Criminal Background Investigation Check](#) prior to beginning employment. Foreign nationals with USCIS employment authorization are considered employees of the University and therefore are required to abide by the University policy as established.

The foreign national employee therefore can not begin employment without confirmation that this process has been completed along with all other federal and University requirements, and that the foreign national has been cleared for employment.

Exception to the Rule: By the approval of the Provost, a foreign national may be allowed to begin employment by including a contingency clause in the employment letter that in doing so, employment is ‘contingent’ upon clearance receipt of the international verification portion of the criminal background investigation check. This is due to the length of time required to receive a response from some international countries. *The exception to the rule does not apply, if the foreign national will require the University to submit a petition for employment with USCIS, full clearance of the criminal background investigation check will be required prior to beginning employment. In addition, this exception clause does not negate the completion of the criminal background investigation form.*

The hiring department should include this process in their timeline for the employee to begin work.

H-1B Dependents (H-4)

The University will not process application materials for H-1B dependents (H-4). The H-1B employee is responsible for the completion of all required paperwork. The University will not mail the dependent-based application with the H-1B employment petition. The H-1B employee will be provided a copy of the receipt Notice of Action to allow the independent filing of the dependent (H-4) petition to USCIS.

All cost related to the dependent-based application is the sole responsibility of the H-1B employee. The University will not pay any dependent fees.

The USCIS does not allow the H-4 dependent employment authorization. H-4 visa holders may apply to change their visa status to H-1B if they find an employer who is willing to file a petition on their behalf.

H-1B Dependent Employer & Willful Violator: Additional Attestations

1. Displacement
 - (a) the University must attest to non-displacement of the U.S. workers in the work force. This occurs when the University (hiring department) laid-off employees, and attempts to hire an H-1B worker within 90 days.
2. Secondary Displacement:
 - (a) the University must attest to non-displacement of U.S. workers in another employer's work force. This occurs when the University (hiring department) attempts to place an H-1B with an affiliated non-dependent employer that has in fact laid-off employees within the last 90 days.
3. Recruitment and Hiring:
 - (a) recruitment of U.S. workers and hiring of U.S. worker applicant(s) who are equally or better qualified than the H-1B foreign national(s).
 - (b) the University must take good faith steps to recruit U.S. workers using industry wide standards
 - (c) the University (hiring department) must offer a job to any U.S. worker who is equally or better qualified than the H-1B worker.

Exemptions

1. Employees who receives wages of at least \$60,000 (including bonus) or;
2. Employees who has attained a master's degree or higher (or equivalent) in a specialty related to the intended position.

Public Access File

The University must create a public access file within 1 working day of the DOL approving the H-1B wage. This includes:

- Copy of the approved Labor Condition Application
- Evidence of the wage rate
- Explanation of the wage determination (State pay grade)
- Prevailing wage source
- Documentation proving the notice requirement has been fulfilled
- Summary of benefits provided to all employees in similar pay grades

Revocation of an H-1B Petition

There are two types of revocation – revocation on notice and automatic revocation. The guidelines listed below govern both types.

1. Immigration Service may revoke an H-1B petition at any time.
2. Revocation is automatic if:
 - the University files a written withdrawal
 - the University ceases to exist
3. Revocation on notice, if:

- the H-1B employee is no longer employed in the position
 - the statements included in the petition by the University (hiring department) or H-1B employee were not true
 - the University (hiring department) violated conditions of the approved petition
 - the approval was made in error by USCIS
4. The University may submit rebuttal evidence within 30 days of receipt of notice of intent to revoke
 5. The University may not appeal automatic revocations
 6. The University may appeal petitions revoked on notice

Authorized Processing Personnel

The Foreign National Administrator in the Department of Human Resources is the designated employee to process all employment-based petitions for the University. This includes all federal/state agency actions and requirements. All F-1 and J-1 Visa Program requests and approvals are processed by the International Students and Scholars Office.

No administrator/dean/faculty/staff or personnel can sign any legal and binding documentation on behalf of the University outside the established employment processes in this policy. Any employee found in violation of this policy will be subject to disciplinary action, up to and including, dismissal from employment.

The hiring department should at no time allow the foreign national employee to lead or dictate the H-1B application process. This application process is employer-based and must be managed by the employer in compliance with University policies and procedures.

H. Permanent Residence

The Office of the Provost is the managing office at NCAT&SU when anticipating the appointment of a foreign national employee for permanent residency based on employment sponsorship through the University. *If an employee is a naturalized U.S. citizen or already in permanent residency (green card holder) status it is not necessary to contact the Provost.*

University departments should not at any time make an offer or agreement to petition for a permanent residence to any employee during the recruitment process, interview session or with the offer of employment.

The University is under no obligation by law to sponsor a permanent residency application. Furthermore, employment at NCA&TSU does not guarantee approval of sponsorship for permanent residency. Permanent Residency will be deemed at the best interest for the University and determined by the Office of the Provost.

Depending upon the type of position being offered, the background of the foreign national and the specific type of immigration case which will be required, the University may choose to “sponsor” or “support” the application for residency by signing certain immigration documents verifying that it is offering the employee a permanent position. However, the term sponsor does not necessarily commit the University to providing in-house services to every approved employee.

Because North Carolina Law prohibits A&T, its departments, officers, and employees from employing any counsel to conduct work on behalf of A&T, unless approved by the Governor, foreign nationals may not employ outside counsel to file an University employer-based permanent residency petition.

Only the Provost can approve requests for sponsorship, and no commitments to sponsor foreign nationals for permanent residence may be made without **prior written approval** from the Provost.

Please be advised that **NO** University faculty member, staff, department chair or dean should extend an offer, make a promise or agree to petition for permanent residency on behalf of a foreign national. Any offer extended without the expressed written approval by the Provost is strictly prohibited and is not authorized by NCA&TSU. Foreign nationals should not designate an attorney to assist, advise or represent the University in the preparation and submission of employer-based petitions or documents and University employees should not sign any documents that have been prepared by an outside attorney. Any employee extending such an offer or signing such documents will be subject to disciplinary action, up to and including dismissal. *Any immigration documents received that require an authorized signature, must be forward to the Office of the Provost.*

Employment-Based Permanent Residency (University Sponsored)

In order for a foreign national to be considered by the USCIS for permanent residency (also know as the green card) based on employment, it is necessary for the employee to be sponsored by the NCA&TSU employing department (i.e., the department must have a permanent position which, it intends to offer the employee). For purposes of permanent residency the term “sponsorship” refers to the act of lending support to an application by means of permanent job offer.

NCA&TSU will not sponsor foreign national visitors in tenure track or for tenure positions. Postdoctoral Research and titles with “visiting” in them such as Visiting Professor are considered temporary positions and are therefore not eligible to be considered for permanent residency sponsorship. Additionally, term contracts are considered temporary and are therefore not eligible to be considered for permanent residency sponsorship.

Under no circumstances should the hiring department guarantee approval for permanent residency to the employee. There are many circumstances which may

prevent the University's efforts to receive USCIS approval for permanent residency on behalf of the employee.

Please be aware that if the University starts the permanent residency process and the individual changes to another employer all processing will cease on the NCA&TSU petition, and all appropriate notices will be submitted to the Department of Labor and USCIS. The determination to submit a cancellation notice will be managed by the Foreign National Administrator under consultation with the Vice Chancellor for Human Resources and the Provost and Vice Chancellor for Academic Affairs.

Only Permanent Positions Are Eligible For Sponsorship

North Carolina A & T State University (NCA&TSU) will only sponsor for permanent residency those employees whose positions meet the USCIS regulations for the definition of "permanent." That is, the position must be:

- Permanent (i.e., expected to last a minimum of four years into the future); and
- The employee must intend to remain in the position indefinitely.

If both conditions do not exist and the permanent residency process is nonetheless undertaken, both the employer and the employee may be subject to investigation for fraudulent activity.

Positions Eligible for Sponsorship at NCA&TSU

It is the policy of the University to consider sponsorship only for individuals in the following types of positions for lawful permanent residency:

- Tenured faculty members: It is not University policy to support permanent residence petitions for lecturers, visiting professors, or other temporary or term faculty appointments (i.e., tenure track).
- Non-teaching research positions of a permanent nature (visiting scientist/researcher or post-doctoral research positions are considered temporary and therefore not eligible to be considered for sponsorship.)

Term appointments are not eligible. Only permanent positions will be considered.

Eligibility of Permanent Residency Cases for In-house Processing

The Office of the Provost, after consultation with the department and the employee, reserves the right to determine whether the case qualifies for approval and in-house processing.

There are five types of permanent residency petitions defined by the USCIS. Only the following two (2) types of permanent residency cases will be considered for processing under NCA&TSU:

- *“Special Handling” Labor Certifications*

Only available to teaching faculty (tenured faculty), the Department of Labor applies fewer restrictions to labor certifications for teaching faculty members.

- *First Preference Priority Workers*

If certain standards outlined by USCIS are met, the University may elect to sponsor the foreign national under the **“Outstanding Professors or Researchers”** category. If these standards are met, no labor certification is required by the Department of Labor.

Cases Not Eligible for University Sponsorship

- Preference 2 for professionals holding advanced degrees (master degree).
- Preference 3 for professionals holding bachelor’s degree or lesser degrees or certificates.

Both of these categories require a labor certification unless the foreign national can prove that their work is in the national interest and that their contributions to the work are so essential and unique that they are not in competition with U.S. workers.

A foreign national may self-petition for permanent residency based on employment under the following categories:

- Extraordinary Ability
- National Interest Waiver

Both of these categories can be handled through outside legal counsel, with the understanding that the employee must submit documents provided by University faculty or staff in support of such a petition to the Office of the Provost.

NCA&TSU will not assist with the Application Form I-485 – Adjustment to Status for the sponsored employee or assume the financial cost to file the application. In addition, the University does not sponsor family-based petitions for employees or their dependents.

Applicant and Department Responsible for Providing All Pertinent Information

In all cases, the department and the employee are required to provide the Office of the Provost with *all* information and documentation required for preparation of the immigration case as specified under U.S. Immigration law and the Department of Labor regulations.

Failure to respond in a timely manner or to provide specific information as requested will jeopardize the residency case and could result in the inability of the University to proceed with the case.

No University department shall provide signatures of authority or supporting documents (i.e., signing legal petition documents gathered by an outside attorney and/or providing letters of reference/employment verification) to an employee with outside attorney representation for any type of employment-based petition (which requires verification of employment at the University) without proper notification to the College or School Dean and the Office of the Provost. Although certain types of employment-based permanent resident petitions do not require the University's sponsorship; the University is liable for all information provided in support of the self-petition by the employee and therefore, warrants notification to the Office of Provost and the College or School Dean.

Applicant May Retain Outside Counsel

In cases of University sponsorship, no department or employee may obtain outside legal representation on behalf of North Carolina A & T State University. Additionally, no NCA&TSU official or employee may sign USCIS Form G-28, Notice of Entry of Appearance as Attorney or Representative, on behalf of the University. All petitions, regardless of the preparer, must be submitted to the Office of the Provost for final review and signature.

Payment of all legal fees to outside counsel will be the responsibility of the employee.

Filing Fees and Associated Charges

Payment to USCIS fees associated with the filing of approved in-house University applications and petitions remain the responsibility of the hiring department. The employee will not pay any portion of the associated fees (i.e., labor certification and/or Form I-140).

USCIS imposes fees for filing all immigration-related petitions. All checks are made payable to the "Department of Homeland Security" and must be drawn from an active University account.

Authorization to Sign Official Documents

The authority to sign immigration related documents for permanent residency rest exclusively with the primary signatory of the Provost and Vice Chancellor for Academic Affairs. No persons other than those specified in this policy are permitted to sign immigration documents on behalf of the North Carolina A & T State University.

Beginning the Process

The recommendation for permanent residency sponsorship begins with the Department Chair in the employment department of the employee. The department

chair must submit the following items to the College or School Dean over the department:

- A comprehensive one-page narrative justifying the request of sponsorship that describes the scholar's background, training, education and contributions to NCA&TSU as well as the department's plans for long term employment of the foreign national employee (position/funding)
- The foreign national employee's CV/resume – illustrating the employee's education, publications, awards, memberships, key accomplishments and other relevant qualifications
- A completed “*Request to University Provost for Sponsorship of Foreign Nationals for Permanent Residence Form*”
- A signed *Statement of Conditions Form* by the employee, department chair, dean and Provost (Note: The official signature of the Provost will be obtained upon receipt and review of all documents-this signature does not guarantee approval of permanent request/recommendation.)

These documents must contain the approval signatures of both the Department Chair and the College or School Dean. The signature of the Department Chair and Dean on the Request Form verifies that the position itself is permanent and that the Department intends to retain the services of the employee on a permanent basis as described elsewhere in this document. The employee's signature certifies that he/she plans to remain in the position indefinitely and understand the terms of the University's sponsorship (if approved by the Provost).

The Dean will be responsible for submitting all documentation to the Provost for final approval. No permanent residency process will commence prior to the review and approval of the Provost. The Provost may require additional justification during the review process.

The University Provost will provide a written decision to the foreign national employee, the department chair, and the Dean. If approved, the written notice will offer the category in which the University will sponsor the employment-based permanent resident petition, as well as processing requirements for the department and employee. If the recommendation is not approved, the decision may offer alternative options in which the employee may qualify to self-petition for permanent residency independently through USCIS. *NOTE: Not all request for permanent residency may receive a favorable approval of sponsorship by the University.*

Contingency Clause

If North Carolina A & T State University agrees to petition for permanent residency on behalf of a foreign national employee and subsequently receives an “Intent to Deny” or “Denial” from USICS, NCA&TSU has no legal obligation to respond to the Intent to Deny, or to appeal the Denial, if the basis is an issue personal to the foreign national: examples being, but not limited to, fraud (including marriage fraud

or attempted marriage fraud), or any other issue personal to the foreign national that resulted in the Intent to Deny or Denial.

H-1B Employees/Candidate

The hiring department will be required to maintain the current H-1B visa status for all foreign national employees approved for permanent residency sponsorship. An approval for permanent residency is not guaranteed by the University or USCIS, therefore maintenance of the H-1B visa status will allow the foreign national to maintain legal status in the U.S. However, if the H-1B visa holder receives an independent employment authorization document by filing the Form I-485/Form I-765 concurrently with the Universities petition Form I-140 request, the hiring department is not required to maintain the H-1B visa for the employee. The employee will be required to provide the Department of Human Resources with official documentation to show their employment eligibility for the duration of the permanent residence process.

If the H-1B employee reaches the six (6) year maximum while the USCIS is adjudicating the permanent resident petition, the University will request annual renewals until receipt of a formal decision from USCIS.

In the event the University receives a denied decision for the sponsored permanent resident petition, the H-1B candidate should have time to consult with the Foreign National Administrator in Human Resources and/or an attorney for other options to maintain status in the U.S.

Recruitment

The hiring department is responsible for following all recruitment actions as outline in this policy (Refer to Chapter 1: Recruitment Practices, Section A – Search Proposal: Search Committee Selection Requirements) and the official policy mandated for academic affairs departments.

In instances where the department receives approval to sponsor a foreign national employee for permanent residency, if the employment period exceeds 18 months from the initial date of hire, the hiring department will be required to re-recruit for the position anticipated to employ the foreign national. Specific re-recruitment procedures will be managed through the Department of Human Resources (Foreign National Administrator).

Filing Timeline of the PERM Labor Certification

The U.S. Department of Labor ruled effective July 16, 2007 changed the alien labor certification process for permanent residence as follows:

- Established 180-day validity period for approved labor certifications: the University must file the Labor Certification for permanent residence in support of a Form I-140 petition with USCIS within 180 calendar day.
- Prohibits substitution of alien beneficiaries on permanent labor certification applications and resulting certifications.
- Clarifies DOL “no modifications” policy for applications.
- Requires the employer to pay all cost of preparing, filing and obtaining certification for the labor certification
- Establishes debarment procedures for employers and attorneys who fail to maintain all regulations governing the labor certification

PERM Labor Certification “Special Handling”

Special Handling (20 CFR, Section 656.18) known as “Optional Special Recruitment and Documentation Procedures for College and University Teachers”

Under the new Department of Labor (DOL) – PERM regulation, the University (hiring department and EEO Office) must retain the below listed items in an Audit File (must be on file before submitting the Labor Certification to the DOL) in the event that DOL request documents. If DOL request documents, the notice to submit is usually within 30 days of the PERM submission. Failure for the University to provide can result in a denial of the case as well as fines, penalties, and/or supervised recruitment of the university by DOL.

The hiring department and EEO must retain the following documents for all positions that may require the selection for employment of a foreign national employee with the desire to obtain employment-based permanent residency through sponsorship at NCA&TSU:

1. Documentation to show clearly that the University selected the alien for the job opportunity pursuant to a competitive recruitment and selection process, through which the foreign national was found to be more qualified than any of the United States workers who applied for the job.
2. Evidence includes the following “Documentation of the Competitive Recruitment and Selection Process:”
 - a. A statement, signed by an official (search committee members) who has actual hiring authority from the employer, outlining in detail the complete recruitment procedures undertaken, and which must set forth: the total number of applicants for the job opportunity; the specific lawful job-related reasons why the alien is more qualified than each U.S. worker who applied for the job. (An example of this statement can be provided by the Foreign National Administrator in Human Resources.)
3. A final report of the faculty and/or administrative body making the recommendation or selection of the foreign national, at the completion of the competitive recruitment and selection process (made to the Dean) and also

including the information above (total number of applicants for the job opportunity; the specific lawful job-related reasons why the foreign national is more qualified than each U.S. worker who applied for the job).

4. A copy of the last one print advertisement for the job opportunity placed in a national professional journal, giving the name and date(s) of publications, and which states the job title, duties and requirements.
5. Evidence of all other recruitment sources utilized.
6. A written statement (from the department chair) attesting to the degree of the foreign national's educational or professional qualifications and academic achievements.
7. Proof that this application is being filed within 18 months after a selection was made pursuant to a competitive recruitment and selection process. (Selection date is usually prior to the offer letter-the date on the division head dealing with faculty hiring, approved the hiring.)
8. The original posting that was posted for 10 consecutive days in conspicuous locations "at the facility or location of employment." Note: As per 20 CFR Section 656.10, General Instructions – this posting must "be provided between 30 and 180 days before filing the application (Form I-140)." The University will post the notice for 10 consecutive business days, and leave it posted for a minimum of 30 consecutive business days before filing the application. This process adds a minimum of 40 extra days to the timing of the case, and track the 18 month deadline accordingly.

Important documents to retain in the PERM AUDIT FILE in addition to the documents listed above:

9. Copies of any letters of recommendation for the alien for whom the University will petition.
10. Resume, degree(s) of the foreign national for whom the University are petitioning. (If the degree(s) is a foreign degree, there must be an official translation and official credential evaluation attached. (See Chapter 1: Recruitment Practices – Educational Credentials)
11. Copies of resumes for all other candidates. The regulations state that "the DOL certifying officer, after reviewing the employer's recruitment report, may request the U.S. workers' resumes or applications, sorted by the reasons the workers were rejected."

Each hiring department is required to maintain a file for each position advertised with resumes (at minimum) of all applicants that applied for the position.

The PERM audit file must contain all University EEO forms (i.e., 101, 102 and 103) and supporting documents. The use of the EEO forms will assist the hiring department and EEO office with the management of the above requirements.

In cases of teaching faculty at NCA&TSU, we must prove that the foreign national is the most qualified of all available applicants. In all other cases, the hiring department must prove that the foreign national is the only qualified candidate. If a U.S. worker meet the minimum requirement in this case, the hiring department must make an offer of employment to the U.S. worker (on the same basis of what would be offered to the foreign national candidate i.e., salary, benefits, job title, etc.).

180-Day Portability Rule

Hiring departments should consider the following when recommending a foreign national employee/candidate for University sponsorship under an employment-based petition for permanent residency:

- Federal regulations state that both labor certifications and employment-based visa petitions remain valid with respect to a “new job” where the USCIS fails to adjudicate an application for adjustment of status within 180 days “if the new job is in the same or a similar occupation as the job for which the “petition was approved” or the “labor certification was issued”.
- The statute provides that the job offer is prospective only. However, the case law imposes an “intent” requirement: an applicant must, at the time that the application for adjustment of status is submitted, have the *intent* to work for the petitioning employer indefinitely. If the applicant resigns in order to work at a higher-paying job two (2) days after the adjustment application is filed, the USCIS may seek to deny the application arguing that the applicant forged the requisite intent at the time that the application was submitted.

Based on the complexity of this rule, the University in all cases will send a notification of termination of employment for any permanent residence petition filed on behalf of a foreign national, citing specific reasons for the request to terminate our petition. The foreign national employee may be required by USCIS to submit a new sponsor to continue the permanent resident application or may continue to process the petition for adjudication (approval or denial). In all cases, the University will have officially provided a notice that the foreign national is no longer employed with our institution.

CHAPTER IV

FORM I-9 COMPLIANCE

North Carolina A & T State University is committed to complying with federal laws and regulations concerning verification of employment eligibility and record keeping for employees hired to work in the United States. To this end, certain members of NCA&TSU staff have been designated to assist the University in such compliance. Anyone with questions regarding any aspect of employment and/or identity verification should contact the appropriate Human Resources employment division (i.e., SPA, Temporary, Student and/or Foreign National).

The Department of Human Resources will offer annual training and conduct periodic internal audits, as deemed necessary. Hiring departments should always have at least one staff member who has received I-9 procedural training. (Note: Independent department I-9 processing is subject to change upon approval of centralized I-9 processing for all University departments through Human Resources.)

The State of North Carolina is a participant in the E-Verify program established by the Department of Homeland Security (DHS) and the Social Security Administration (SSA) to aid employers in verifying the employment eligibility of all newly hired employees. As an agency of the State, North Carolina A & T State University utilizes the E-Verify system for I-9 processing. Our participation in the program does not exempt the University from the obligation to comply with the I-9 form process for each individual we hire (student and employee).

Federal regulations require that all employees, including those hired on a temporary basis, complete Section 1 of the I-9 Form on or before the first day of employment. *The processing department must include the list of acceptable documents and set of instructions to each employee completing the Form I-9.*

The University processing department must complete Section 2 of the Form I-9 no later than the 3rd day of work for the employ. The designated personnel must have the eligibility information entered in to E-Verify by this deadline period. *For those academic departments that process EPA employee I-9 forms, it is imperative that the form is completed in a timely manner to ensure the University is in compliance with E-Verify federal regulations.* Failure to provide the I-9 form by the 3rd business day jeopardizes the employees work authorization and the University could receive federal fines and penalties.

If an employee is hired for a project that is expected to last less than three days, the **entire** I-9 process (both Section 1 and 2) must be completed on or before the **employee's first day of employment (no exceptions)**.

All student, temporary and SPA employees must report to the Department of Human Resources to complete the Form I-9 process. The hiring department is required to

confirm that the employee has completed all documentation needed to begin employment at NCA&TSU.

The current process for EPA employees allows the hiring department to complete the Form I-9 with the employee. The department must ensure that this process occurs before or on the first workday of employment at NCA&TSU (no exceptions).

It is recommended that the hiring department review the full policy for I-9 Employment Eligibility and Verification Policy and Procedure Manual.

PAYROLL AND TAXES

The University Payroll and Accounting Offices frequently encounter federal, state, and local tax issues while conducting business activities. Each department provides processing procedures on these issues respective to their managing areas.

- The payroll department is responsible for determining whether *compensation* is subject to withholding based on IRS regulations.
- The accounting office is responsible for determining whether assistantships, scholarships, fellowships and honorariums is subject to withholding based on IRS regulations.

This section includes informational guidelines for both offices pertaining to management of foreign national payroll and taxes while attending or working at North Carolina A&T State University.

An individual assessment must be made by the University Payroll Department to determine if a foreign national resident alien or nonresident alien qualifies for tax treaty under IRS regulations.

For purposes of individual taxpayer matters, the payroll department will only advise on employment related issues for tax compliance with the University. The payroll staff cannot act as an individual's tax advisor. Further, the University is not a certified authority to administer tax advice to its employees.

Payments to Foreign Nationals

Payments to foreign nationals are complicated due to immigration and tax laws.

- Immigration law addresses whether it is legal to make a payment to a foreign national for services performed within the U.S. This determination is based on visa classification and type of payment involved.
- Tax law addresses whether taxes must be withheld on the payment and whether the payment must be reported on Form 1042S.

Therefore, the University will not make a payment to a foreign national unless the appropriate processing office has adequately reviewed the "immigration status" of the

foreign national. In addition, the Department of Human Resources must have a completed Foreign National Information Form and U.S. federal ID number. In some cases, the payroll / accounting office may process payments prior to receipt of the foreign national questionnaire, but this exemption will not grant treaty benefits without the required documents.

The payroll office must meet with each individual foreign national applying for Treaty Benefits for employment.

Wages and Salaries Paid to Foreign Nationals

The IRS requires a U.S. Federal ID for tax reporting and treaty exemptions, as well as on all U.S. tax returns.

All foreign nationals paid compensation through payroll at NCA&TSU must obtain a U.S. social security number and complete the Foreign National Information Form to ensure that the Payroll Department can analyze the U.S. tax status and provide services related to tax treaty regulations.

Withholding and Reporting

NCA&TSU must pay thirty percent (30 %) in U.S. federal taxes on payments to foreign nationals for services performed in the U.S. All foreign nationals will be subject to thirty percent tax withholding unless the payee (foreign national) meets the conditions for:

- Wages subject to wage withholding
- A tax treaty reduction or exemption
- A code exemption (internal revenue)
- 14% for non-service scholarships/fellowships (F or J status only)

The thirty percent withholding rule can apply to honorarium payments made to foreign visitors.

The University reserves the right by law to withhold taxes at the highest rate if,

- The documentation is not received, or
- The documentation is unreliable (unverifiable), and
- Except in cases where the withholding is 14% on grants paid to those in For J status based on presumptions.

Payment to nonresident aliens (foreign nationals) are reported to the employee and the IRS.

Reimbursing Business Expenses to Foreign Nationals

The Accounting Office will verify if a payment can be treated as a non-taxable reimbursed business expense, the visitor should be employed in a professional capacity in his or her country (i.e., not a student) and NCA&TSU should qualify as a “temporary”

(three months or less) work location for the visitor. If the visit exceeds three months, the hiring department and visitor should contact the Accounting Office for consultation.

NCA&TSU will reimburse the business expense (transportation, meals, lodging) for short-term visitors as long as the voucher includes business purpose and original receipts supporting the expense(s).

Windstar Tax Navigator Data Requirements

The University manages IRS compliance for foreign nationals through the Windstar Tax Navigator System. The system's functional capabilities provide record management to ensure compliance for tax benefits and treaties for each foreign national visitor. The Department of Human Resources processes the data collected through the system. Utilizing the system also allows the University to meet federal compliance to identify foreign national visitors at NCA&TSU on our campus.

The following documentation must be completed with the Department of Human Resources to guarantee compensation and tax reporting compliance:

- Foreign National Information Form (front and back)
- Copy of Visitors Social Security Card
- Copy of Visitors I-94 Form (front and back)
- Copy of Visitors Visa Page (visa picture page from passport)
- Copy of Visitors Passport Page
- Copy of Visitors Form I-20 or DS-2019 (if foreign national student) (All pages)
- Documentation update if status changes from one visa to another (i.e., F-1 to H-1B or F-1 Student to F-1 OPT Work Authorization)
- Copy of Employment Authorization Card (to all that applies)
- Copy of Permanent Resident Card (to all that applies)

The hiring department is responsible for ensuring that the foreign national employee / visitor meet all requirements to receive payment from the University on or before the initial date of employment. The department should schedule an appointment with the Foreign National Administrator for the foreign national visitor or require the foreign national visitor provide signed documentation that all requirements are completed with the Department of Human Resources.

Scholarships and Fellowships

Non-service scholarship/fellowship awards are potentially applicable exclusions from US income tax with respect to the Internal Revenue Code. Section 117 allows a specific exclusion from gross income for scholarship and fellowship awards meeting criteria for "qualified scholarship" classification.

All scholarship awards are reviewed in Financial Aid and the Division of Business and Finance for taxability, proper withholding and reporting.

Internal Revenue Service (IRS)

Forms and Reports

Business and Finance prepares the information returns (990s), income tax returns (990Ts), tax documents reporting U.S. income subject to withholding for foreign nationals (1042s), and sales tax returns on behalf of the University. This office is responsible for filing all reportable tax and withholdings for students to the Internal Revenue Service on a quarterly basis.

It is imperative that all foreign nationals (employees and students) complete the required Foreign National Information Form prior to beginning employment at the University to ensure that the appropriate business office receives the required information to report.

HONORARIUM AND REIMBURSEMENT PAYMENTS

The University Accounting Office is responsible for making taxability determinations regarding non-resident aliens (foreign national visitors) for scholarships and account payables. This includes honoraria and reimbursement payments to foreign national visitors.

Honoraria are payments that represent a token of appreciation, such as:

- A gift or amount not contractually obligated to pay
- For usual academic activities
- Carried out at
 - A institution of higher education
 - A related or affiliated nonprofit organization
 - A nonprofit research organization
 - A governmental research organization

Foreign national visitors that will be in the U.S. for an extremely brief period and who are B-1 or Waiver Business (WB) status may be paid honoraria and reimbursed for travel and per diem for “usual academic activities,” such as participating in conferences, giving lectures, engaging in collaborative research, attending meetings and seminars, etc. The University may in addition make payments for performances only if the audience consists of non-paying students and/or the general public provided that general admission tickets have not been sold. No honorarium will be paid by the University for a performance for which the audience must pay a fee. There is no maximum or minimum honorarium payment.

NCA&TSU can make payment to a foreign national visitor who is on a J-1 visa, B-1 visa or from a visa waiver country.

The University department extending the invitation is required to contact the Accounting Office prior to processing an honorarium for a foreign national visitor that does not qualify under the above visa categories.

Eligibility Terms for Honorarium

Personal services and honoraria payments to nonresident aliens (NRA's) are subject to specific IRS requirements and require special handling. Inviting departments should encourage the visiting foreign national to apply for a B-1 or visa waiver for business visa (if applicable) before entering the U.S. *It is the visitor's responsibility to provide the proper justification at the port of entry for purpose of visit.*

A B-1 visitor may be paid an honorarium and reimbursement for travel and per diem for University related academic activities. However, a B-2 visitor and/or Visa Waiver Tourist may only be reimbursed for travel and per diem expenses for university related activities (not an honorarium).

The University must adhere to legislative law that determines an educational institution can only pay an honorarium to a foreign national on a B-1 or WB visitor under limited circumstances. NCA&TSU will make payment to a foreign national visitor under the following classification and terms:

- B-1 Visitor/Visa Waiver for Business (WB)
 - University activity will last no longer than 9 business days
 - Have not accepted honoraria from more than 5 institutions in the past 6-month period
- B-2 Visitor/Visa Waiver for Tourist (WT)
 - Already present in the U.S. when received invitation from NCA&TSU department. Note: If the foreign national visitor enters the U.S. under the B-2 or WT visa category with the intent to participate in an activity that will offer an honorarium, the University is not allowed
 - Must meet the stated B-1 visitor criteria in order to receive honorarium; otherwise can only receive reimbursement for travel and per diem expenses
- J-1 Visitor
 - If the J-1 program sponsor anticipates the activity and the Responsible Officer gives a written approval
 - NCA&TSU departments must communicate the intent of visit with the International Students and Scholars Office (ISSO) prior to the processing of the visitors DS-2019 document
 - NCA&TSU department must contact the ISSO Responsible Officer before allowing the J-1 visitor to participate in an activity that requires honorarium payment or reimbursement expenses

Note: If the J-1 visitor is sponsored by another institution, the University (NCA&TSU ISSO Responsible Officer and department) must first obtain a letter of authorization from that institution, signed by the Responsible Officer (RO) or Alternate Responsible Officer (ARO)

NCA&TSU will pay an honorarium without a U.S. Federal ID for foreign nationals who qualify.

Visa Waiver for Business (WB)

There are citizens of certain countries taking part in the visa waiver program. This means there is no visa needed to enter the U.S., but the visitor is limited to 90 days maximum stay, with no extension or change of status permitted within the U.S.

It is the responsibility of the inviting department to clarify the terms of the visit and make the proper recommendation for entry to the visitor to meet the needs of the University as stipulated.

While the WB visa is convenient in many cases (no visa application at the U.S. Embassy is necessary) visitors should be warned that by signing the WB Admission-Departure card, they give up certain immigration rights, such as the right to appeal. Because plans change, and because a five year B-1/B-2 visa stamp is very convenient for repeat visitors, The University recommends that most visitors try to obtain a B-1 visa stamp and not rely on the WB/WT Visa Waiver Program.

Please refer to Chapter III – Section D: B-1 Visa Holder for a list of countries currently participating in the WB/WT Visa Waiver Program.

Invitation Letter from Department

The visitor will need a letter from the inviting NCA&TSU department which includes the following information: reference to the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA); details of the visitors activities here; the duration of the visit; the amount and type of remuneration; and an alert that they may only be paid an honorarium for a stay of up to nine days and they may only receive six such payments within any six month period. The visitor must present the letter to the Immigration officer at the port of entry.

NCA&TSU department's can receive a sample invitation letter from the Foreign National Administrator in Human Resources.

Departmental Process for Honorarium or Reimbursement Payments

The inviting department is responsible for providing all documentation to the Accounting Office.

1. Submit the following documents to the University Accounting Office at least two (2) weeks prior to the date the check is to be issued:
 - a. A completed and approved Authorization for *Personal Services Form (CFS-1)* attached to the check request or purchase order.
 - b. A completed *Foreign National Information Form* with all required immigration documents (legible copy) as described in instructions and attached form.

- c. Payee certification of eligibility to receive payment or *Statement for Visitor Present on B Visa/Visa Waiver for Services Form*. If the visitor is in B status – they must complete the Statement for Visitor Present on B Visa/Visa Waiver for Services Form.
 - d. Completed IRS Forms W-8 BEN if treaty benefits are applicable and desired.
 - e. A copy of the approved agreement or contract with NRA (required).
2. If the NRA's tax status has not been properly documented, IRS regulations require 30 percent withholding on all payments.
- a. The University Accounting Office is responsible for making taxability determinations regarding NRA's for scholarships and account payables. The NRA must complete the Foreign National Information Form with clear copies of required immigration documents attached. The requesting department must also provide specific information regarding the reason for payment.
 - b. Often an NRA is visiting the U.S. for a short period of time and has not obtained a taxpayer identification number. The NRA has two options:
 - Apply for a taxpayer identification number from IRS before the trip to U.S.; or
 - Apply for a taxpayer identification number upon arrival in the U.S. and provide the University Accounting Office with receipt of the application. (*The length of time for IRS to process this request is not defined by the University.*)
3. Payments will be processed in Banner Finance and issued through the University Accounting Office.

Treaty Exemptions on Honorarium

The University discourages departments seeking treaty exemption on honoraria because the payments are generally minor, the paperwork for NCA&TSU and the recipient is substantial, and the recipient is generally no better off and might be worse for the visitor. The language and restrictions in treaties differ, and some treaties have limited privileges, which if exhausted in one visit, cannot be reused in subsequent visits (or at least not used for some time). In addition, if we withhold tax, visitors will not be subject to double taxation. They can generally elect a tax credit in their home countries for taxes paid in the U.S. or can file U.S. tax returns for the appropriate refunds – albeit the IRS rejects returns unless they have U.S. federal I.D. numbers. If we grant treaty exemption, the IRS reports the income to the individual's home country.

Summary for Travel and Expense Reimbursements

This summary is provided to employees and non-employees who incur *necessary* and *reasonable* travel and business expenses in the conduct of *official* University activities. A *necessary* and *reasonable* expense is one for which a clear business reason exists and for which the cost is not excessive.

Authority and responsibility for approving travel and business expenses rest with the person responsible for the account / activity to which the expense will be charged. Approvers have primary responsibility for ensuring compliance with the policies under the [Business and Finance Division](#). University departments are encouraged to consult with the Accounting Office in such matters of payment to foreign national visitors as outlined in this section of the policy.

More restrictive travel and business expense policies mandated by specific programs or circumstances may take precedence over the policies in the Employment Policies and Procedures for Hiring Foreign Nationals.

FUNDING SOURCE FOR IMMIGRATION PETITIONS

The Division of Business and Finance has an established policy stipulating specific guidelines managing the funding sources available for use when paying for application and petition cost associated with employment authorization from USCIS on behalf of a foreign national. (Refer to the Division of Business and Finance website: [Policies and Procedures – Spending Guidelines by Fund Source](#) – Page 6 and 14)

It is the responsibility of each Department Chair and College or School Dean to adhere to the specified guidelines when processing payment to support an USCIS application and/or petition, as well as ensure that funds are available in the appropriate funding source for use.

When the department sponsorship is based on *grant* funds, the department must communicate directly with Contracts and Grants to confirm that funds can be used for USCIS application and petition based fees.

MAILING USCIS APPLICATIONS

The University will mail all employment-based petitions and applications to USCIS as approved for sponsorship. It is the responsibility of the hiring department to financially support the cost to mail petition documents to USCIS. The employee can not incur the cost of regular or express mail for University employment-based petitions.

In addition, North Carolina A & T State University will *not* mail self-petitioned or dependent applications along with the University employment-based documents to USCIS. The Department of Human Resources will provide a case number to the employee upon receipt from USCIS to allow the employee to file personal petitions with USCIS.

The hiring department will be required to provide a University mail slip to the Department of Human Resources for package mailing. In the event, the department wishes to mail the employees immigration documents by express mail, the Department of Human Resources will complete and seal documents with the appropriate information for mailing. Human Resources will utilize the tracking number on the document to confirm arrival and receipt with USCIS.

CRIMINAL INVESTIGATION BACKGROUND CHECK

The University requires all of its employees to complete a [Criminal Background Investigation Check](#) prior to beginning employment. Foreign nationals with USCIS employment authorization are considered employees of the University and therefore are required to abide by the University policy as established.

The foreign national employee therefore can not begin employment without confirmation that this process has been completed along with all other federal and University requirements, and that the foreign national has been cleared for employment.

Exception to the Rule: By the approval of the Provost, a foreign national may be allowed to begin employment by including a contingency clause in the employment letter that in doing so, employment is ‘contingent’ upon clearance receipt of the international verification portion of the criminal background investigation check. This is due to the length of time required to receive a response from some international countries. ***The exception to the rule does not apply, if the foreign national will require the University to submit a petition for employment with USCIS, full clearance of the criminal background investigation check will be required prior to beginning employment. In addition, this exception clause does not negate the completion of the criminal background investigation form.***

The hiring department should include this process in their timeline for the employee to begin work.

CHAPTER V

POLICY SUMMARY

The Department of Human Resources works in partnership with the Office of the Provost to ensure compliance in the employment process for foreign nationals at the University. The University does not sponsor foreign national employees for SPA (State Personnel Act) positions, only EPA academic positions. The University reserves the right to amend guidelines and procedures of this policy in the best interest of North Carolina A & T State University.

The recruitment process is the initial step to support the University in sponsoring a foreign national with employment-based petitions and applications. If recruitment procedures are not properly completed, it may be deemed necessary for the Provost to deny an employment-based petition.

The University will abide by all federal and state regulations governing the recruitment, selection, hiring and petitioning rights to sponsor a foreign national for employment. It is ultimately the responsibility of the Department of Human Resources to ensure that the University has the necessary documents and resources available to support such immigration petitions (per guidelines and procedures outlined in this policy).

The approval for employment for foreign nationals rest under the authorization of the Provost and Vice Chancellor for Academic Affairs, Dr. Janice G. Brewington. This employment-based policy is administered under the authorization of the Vice Chancellor for Human Resources, Ms. Linda R. McAbee.

POST-DOCTORAL SCHOLARS POLICY

The Postdoctoral Scholars Policy is managed by the Department of Human Resources in collaboration with the Vice Chancellor of Research and the International Students and Scholars Office.

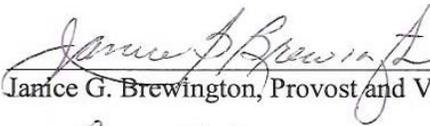
Utilize the provided information to review the official policy outlining the guidelines regarding Postdoctoral Scholars: <http://facultypages.ncat.edu/hr/>; NCA&TSU Personnel Policies – Section IX: Postdoctoral Scholars.

Approved:



Linda R. McAbee, Vice Chancellor for Human Resources

April 7, 2008
Date



Janice G. Brewington, Provost and Vice Chancellor for Academic Affairs

April 7, 2008
Date



Stanley F. Battle, Chancellor

April 7, 2008
Date