**Oberlin College**

**VISA Guidelines for Recruiting and Hiring International Faculty & Staff Members**



*Provided by Oberlin College Human Resources*

*This is not intended to be legal advice, but general guidelines for immigration issues which may impact Oberlin College employees. Due to the ever-changing landscape of U.S. immigration law, any questions or concerns regarding any specific matter should be directed to Human Resources.*

**International Professional and Faculty Member Issues**

As Oberlin College continues to hire more international faculty and professionals, it is important for every department to recognize that there are several immigration, state, and federal concerns when engaging in the employment of a foreign national - or the advertisement of a position for which a foreign national may be hired. As our College community becomes more diverse, there is an increasing need to ensure that every hiring situation is prepared in the event an international candidate be selected.

The following provides an overview of some of the issues which may arise when seeking to hire international faculty and professionals.

**Nonimmigrant Visa Classifications – Short- and Long-Term Appointments**

A foreign national who seeks to work in the United States will require a work-authorized visa status. There are several possibilities for Oberlin faculty and staff which will be described in detail here.

J-1 Visa

The Exchange Visitor (J-1) nonimmigrant visa category is for individuals approved to participate in work- and study-based exchange visitor programs. Participants are integral to the success of the program.

The exchange of professors[[1]](#footnote-1) and research scholars[[2]](#footnote-2) promotes the exchange of ideas, research, mutual enrichment and linkages between research and academic institutions in the United States and foreign countries.

A Professor or Research Scholar must:

1. Not be a candidate for a tenure track position;
2. Not have participated in and completed a professor or research scholar program within the last 24 months preceding the beginning date of their new program’s commencement;
3. Not have participated in a J Visa program for all or part of the 12-month period immediately preceding the start date of a professor or research scholar program unless they meet one of the following exceptions:
4. The participant is currently in a professor or research scholar program and is transferring to another institution in the United States to continue their current J-1 program;
5. The participant’s prior physical presence in the U.S. on a J-visa program was less than six months in duration; and
6. The prior participation was as a [short-term scholar](http://j1visa.state.gov/programs/short-term-scholar/).

Oberlin is approved by the State Department for several categories of J-1 visitors in addition to the two noted above, all of which have different requirements and maximum durations of stay.

In order to work at Oberlin in J-1 status, the College’s Responsible Officer or an Associate Responsible Officer must issue a visitor a Form DS-2019, which may be used to apply for a J-1 visa at U.S. Embassy or Consulate. For additional information and to begin the J-1 process for a visitor to Oberlin, please contact Human Resources.

**H-1B Visa**

The most appropriate nonimmigrant visa status for long-term hires, including tenure-track positions, at Oberlin is the H-1B. It is designed to allow U.S. employers to recruit & employ foreign professionals in specialty occupations within the United States for a specified period of time. The H-1B program provides the opportunity for foreign workers in specialty occupations to legally live and work in the US for up to six years, and entitles their spouse and children (*under the age of 21*) to accompany them to the United States pursuant to H-4 visa status. Although an H-4 dependent spouse and children may live and attend school in the United States, they may not work. (There are some exceptions to this; an H-4 spouse may work in some circumstances if the H-1B employee has reached a certain point in the permanent residence process and is subject to an immigrant visa backlog. For additional information, contact Human Resources.)

Under H-1B visa requirements:

1. H-1B petitions must be filed by an employer on behalf of a foreign national employee. Foreign individuals themselves cannot self-petition for an H-1B. The number of H-1B visas issued each year is subject to an annual cap (*known as H-1B cap*) that is determined by the US Congress. As a post-secondary educational institution, Oberlin is not subject to the H-1B cap.

2. H-1B workers must possess at least a Bachelor's degree or its equivalent in a field related to the position offered, and the position must require at least a Bachelor’s degree in a particular field.

3. In order to obtain an H-1B for an employee, the employer must first file a Labor Condition Application (LCA) on Form ETA 9035 with the U.S. Department of Labor (DOL). On the LCA, the employer attests that the H-1B visa worker is being paid the higher of the prevailing wage or the actual wage for the occupation, and that employment of the foreign worker will not adversely affect the working conditions of similarly employed U.S. workers. Prevailing wage for an H-1B petition may be obtained either through a formal filing of a prevailing wage request with the DOL (see more below), or more commonly, through a careful review of the DOL’s Occupational Employment Statistics (OES) database.

4. The initial H-1B may be issued for up to three years. It may be extended for an additional three years, for a maximum of six years. In some cases, H-1B status can be extended beyond the six-year limit.

5. An H-1B worker can also recapture time spent abroad while in H-1B status. If a foreign national opts to recapture time abroad, then periods of time spent not in the United States may be added to the maximum six-year period by filing a new H-1B petition.

General requirements to be approved for an H-1B visa:

1. A bachelor’s degree or higher, or its equivalent, is normally the minimum requirement for the particular position;
2. The degree requirement is common for this position in the industry, or the job is so complex or unique that it can only be performed by someone with at least a bachelor's degree in a field related to the position;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

USCIS sometimes refers to the Occupational Outlook Handbook (OOH)[[3]](#footnote-3) from the DOL to determine whether certain jobs require a degree. If the OOH does not indicate that at least a Bachelor’s degree in a related field is normally the minimum requirement for the position, examples of evidence that may be submitted to demonstrate that the position normally requires such a degree include:

1. Copies of past position announcements, if relevant, that reflect the minimum requirements for the position and which show that the institution normally requires a degree for the position.  The position is so specialized or complex it can only be performed by someone with a degree, including a detailed description of the petitioner’s business/products/services and the duties of the position.

2. A detailed description of the petitioner’s business/products/services and the duties of the position, along with written opinions from experts confirming that the position is so specialized or complex it can only be performed by someone with a degree (in a related field).

3. Job listings, letters and/or affidavits from other employers reflecting the minimum requirements for the position and which shows that the degree requirement is common to the industry in parallel positions among similar organizations.

4. Written opinions from experts in the field explaining how the degree is related to the role need to be performed.

For most positions at Oberlin for which an H-1B is likely to filed, this analysis is not required, however, the issue does occasionally arise.

H-1B visas are job-, location-, and employer-specific. If ANY changes are contemplated to the H-1B worker’s employment, they should first be discussed with Human Resources and immigration counsel to determine if an amendment to the H-1B petition is required.

**Other Temporary Work Visas for Non-Students**

In addition to the J-1 and the H-1B, there are a few other nonimmigrant visa categories which may apply to foreign nationals seeking to work for Oberlin College.

O Visas:

1. The O Visa classification is for individuals demonstrating extraordinary ability in their field.
2. For persons with extraordinary ability or achievement in the sciences, arts, education, business, athletics, or extraordinary recognized achievements in the motion picture and television fields, demonstrated by sustained national or international acclaim, to work in their field of expertise. Includes persons providing essential services in support of the above individual.
3. The O nonimmigrant classification includes:
4. O-1A: individuals with an extraordinary ability in the sciences, education, business, or athletics;
5. O-1B: individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry;
6. O-2: individuals who will accompany an O-1 artist or athlete to assist in a specific event or performance.  For an O-1A, the O-2 worker’s assistance must be an “integral part” of the O-1A’s activity. For an O-1B, the O-2 worker’s assistance must be “essential” to the completion of the O-1B’s production. The O-2 worker has critical skills and experience with the O-1 that cannot be readily performed by a U.S. worker and which are essential to the successful performance of the O-1;
7. O-3: individuals who are the spouse or children of O-1s and O-2s
8. To qualify for an O-1 visa:
9. The beneficiary must demonstrate extraordinary ability by sustained national or international acclaim and must be coming temporarily to the United States to continue work in the area of extraordinary ability.
10. Extraordinary ability in the fields of science, education, business or athletics means a level of expertise indicating that the person is one of the small percentage who has risen to the very top of the field of endeavor.
11. Extraordinary ability in the field of arts means distinction.  Distinction means a high level of achievement in the field of the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.
12. To qualify for an O-1 visa in the motion picture or television industry, the beneficiary must demonstrate extraordinary achievement evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent the person is recognized as outstanding, notable or leading in the motion picture and/or television field.
13. O-1 visas require a written consultation from an appropriate labor organization.
14. O-1 visas may be issued in up to three year increments with appropriate documentation. There is overall maximum period of stay.

P Visas:

1. P-1 classification applies to a foreign national who is coming temporarily to the United States:
	1. To perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, or
	2. To perform with, or as an integral and essential part of the performance of, an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time, and who has had a sustained and substantial relationship with the group (ordinarily for at least 1 year) and provides functions integral to the performance of the group.
2. P-2 classification applies to a foreign national who is coming temporarily to the United States to perform as an artist or entertainer, individually or as part of a group, or to perform as an integral part of the performance of such a group, and who seeks to perform under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states, and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers.
3. P-3 classification applies to a foreign national artist or entertainer who is coming temporarily to the United States, either individually or as part of a group, or as an integral part of the performance of the group, to perform, teach, or coach under a commercial or noncommercial program that is culturally unique.
4. P-1 visas require a written consultation from an appropriate labor organization.
5. Maximum period of stay varies depending on the type of P visa.

Q Visas:

1. Q-1 visas are for participants in an international cultural exchange program.
2. Requirements of Q-1 program:
	1. Activities must take place in a school, museum, business or other establishment where the American public, or a segment of the public sharing a common cultural interest, is exposed to aspects of a foreign culture as part of a structured program.
	2. The international cultural exchange program must have a cultural component which is an essential and integral part of the international cultural exchange visitor's employment or training. The cultural component must be designed, on the whole, to exhibit or explain the attitude, customs, history, heritage, philosophy, or traditions of the international cultural exchange visitor's country of nationality.
	3. The Q-1 visitor’s employment or training in the U.S. may not be independent of the cultural component of the international cultural exchange program. The work component must serve as the vehicle to achieve the objectives of the cultural component. The sharing of the culture of the international cultural exchange visitor's country of nationality must result from his or her employment or training with the qualified employer in the United States.
3. Q-1 Visa Holders:
	1. Must be 18 at the time petition filed;
	2. Must be qualified to perform work;
	3. Must have ability to communicate cultural attributes of country; and
	4. Must have resided and been physically present outside the U.S. for the immediate prior year if previously admitted as Q.
4. Q-1 visa holders must be employed under the same wages and working conditions as U.S. workers.
5. Q-1 visas may be issued for a maximum period of 15 months. Applicants for Q-1 visas must demonstrate an intent to return to their home country at the conclusion of their stay in the United States.

TN Visas

1. TN visa status is a product of the North American Free Trade Agreement (NAFTA). It applies only to Canadian and Mexican citizens seeking to enter the United States to work in one of the occupations enumerated in NAFTA.
2. TN visa applicants must meet the qualifications for the occupation as described in NAFTA; generally, a Bachelor’s degree is required.
3. Canadian citizens may apply for TN status at the U.S. port of entry; no visa stamp is required. Mexican citizens must apply for a TN visa at a U.S. consular post.
4. TN status is issued for up to three years and may be extended indefinitely, as long as the applicant can demonstrate nonimmigrant intent.

**Visa Denials**

U.S. law generally requires visa applicants to be interviewed by a consular officer at a U.S. Embassy or Consulate. After relevant information is reviewed, the application is approved or denied. While the vast majority of visa applications are approved, U.S. law sets out many standards under which a visa application may be denied.

* An application may be denied because the consular officer does not have all of the information required to determine if the applicant is eligible to receive a visa, because the applicant does not qualify for the visa category for which he or she applied, or because the information reviewed indicates the applicant falls within the scope of one of the inadmissibility or ineligibility grounds of the law.
* An applicant’s current and/or past actions, such as drug or criminal activities, for example, may make the applicant ineligible for a visa.
* In certain cases, a visa applicant may be selected for “administrative processing.” This is usually because the applicant’s name is similar to that of someone who has previously been judged inadmissible, usually on grounds of national security. If this occurs, the consular post will retain the applicant’s passport until processing is completed and the visa is either issued or denied, which can take anywhere from a week to six months. The State Department will not expedite this process under any circumstances, as it is based on national security concerns.
* If denied a visa, in most cases the applicant is notified of the section of the law which is the basis of denial. In some cases, the denial may be overcome with additional evidence and the visa ultimately issued. In other circumstances, it may be possible for the applicant to apply for a waiver of their ineligibility. In others, unfortunately, the applicant may not be able to come to the United States.

**Permanent Residence**

Often when an international professional or faculty member is hired, he/she will seek out permanent residence.[[4]](#footnote-4) If certain steps are missed, the international hire may no longer be eligible. The process listed below ensures that the recruitment process will meet the needs for an international hire that may later seek permanent residence. Please consult this process when initiating the hiring process for both temporary and permanent positions.[[5]](#footnote-5)

**The Labor Certification Process**

This document refers ONLY to employment-based immigration processes that require the filing of a labor certification application. [[6]](#footnote-6) This is a three- step process:

1. the College must file for a Permanent Labor Certification (PERM) Application with the U.S. Department of Labor, which describes the position as advertised and such application must be Certified,
2. the College then uses the certified application to file an Immigrant Petition with USCIS on Form I-140);
3. when the Immigrant Petition is approved (and in some cases concurrently with the I-140), the individual must then file an Application to Adjust Status to Permanent Resident (Form I-485) (sometimes referred to as the “Green Card Application”) for him or herself and any dependent spouse and children (under age 21).

If the hiring process has already been completed, contact Human Resources as soon as possible to determine if the process used meets the requirements for permanent labor certification. Below are the deadlines for filing the first step toward permanent residence based upon employment:

* For Faculty: The Permanent Labor Certification application must be filed no more than 18 months from the date on the person’s offer letter. If too much time has elapsed or the recruitment does not meet DOL requirements, the faculty member may be eligible to apply for permanent residence under the process for Staff.
* For Staff: The PERM application must be filed no later than 6 months after the date on which the first recruitment ran.

**Job Description.** Once it is determined that there is a need to hire a professional or faculty member, it should determine the specific job responsibilities of the position, determine candidate selection criteria, and create the job description.

1. For professional positions: Once the job description is created, contact Human Resources to determine the prevailing wage for the position. If an international candidate is ultimately chosen for this position, the compensation must meet the prevailing wage requirement (as mentioned below) or the candidate may not be approved for the proper visa or work authorization. The job description provided by the department will be used to locate a comparable position in the Department of Labor’s database. The job code derived from this position will be used for visa and work authorization purposes should an international professional be hired.
2. For faculty positions: Once the job description is created, determine whether the position will be part-time or full-time, a tenure-track position or non-tenure track position.
3. If the candidate is offered a permanent position, the College can initiate the permanent residence process using the PERM/Labor certification process once the person arrives to begin work. If the position is temporary or part-time, the College cannot. Please contact Human Resources immediately upon hiring an international employee who would like to initiate the permanent residence process.

**Prevailing Wage Determination.** Labor certification requires that the applicant must be paid the higher of the actual wage or the prevailing wage for the occupation within the area of employment.

For purposes of labor certification, the College must obtain a prevailing wage determination from the U.S. Department of Labor, regarding of whether original recruitment or additional recruitment is used. This process can take from several weeks to over two months, depending upon current processing times at the time of the application.

If the prevailing wage determined by DOL is higher than the offered wage, the department must determine if it is possible to raise the salary to meet the prevailing wage for the foreign national at the time that the permanent residence (“green card”) is approved. If the College agrees to the higher wage, then the DOL’s wage determination becomes the offered wage and must be used on the labor certification application. After the prevailing wage is completed the department should move forward to advertise the position. If the position has already been advertised and the wage was included in the advertisement, if such wage does not meet the prevailing wage then the advertising may be invalid and additional recruitment will be required.

**Recruitment**. It is important to enter the initiation of every recruitment process with the presumption that an international applicant may be hired for the position. There are two types of recruitment that can be done under the labor certification process.

* 1. The first type is available only for faculty and is called “special handling.” This method of recruitment involves those positions that include “some actual classroom teaching” and can be pursued for the following positions: professor; associate professor; assistant professor; instructor; lecturer; and teacher. This position must be full-time, and must be a tenure track or continuing appointment in accordance with College policy. The recruitment must be done PRIOR to hire.
1. This type requires that at least one national print ad be placed - for example, in the *Chronicle of Higher Education -* or that at least one ad be placed online in a recognized academic journal for at least 30 days. The labor certification application must be filed within 18 months of the date of selection or offer by the Search Committee of an international faculty member. Under this process, the search committee must be able to show that the foreign national was more qualified than the other candidates.
2. When the prevailing wage determination has been received, the department must post an Internal Job Posting, referred to as a “Notice of Filing,” in a conspicuous location at the worksite (usually near where other wage and safety notices are posted) for 10 consecutive business days. The salary of the offered position MUST be included on the notice. A salary range is acceptable, but if a range is provided the lower end of the range must be equal or greater to the prevailing wage for the position. Human Resources will prepare this notice for the department.
3. The department must keep detailed and accurate records of the recruiting process and must provide to Human Resources:
* A final report of the Search Committee describing in detail the selection process and hiring recommendation made.
* A written statement from the hiring authority attesting to the degree of the foreign national’s educational or professional qualifications compared to all other applicants seriously considered for the position.
* Copies of all the advertising completed for the position (printouts of newspapers, printouts of websites, etc.), with the date/time stamp on the page.
* Copies of all the CVs and Resumes submitted by candidates for the position.

2. The other type of recruitment is called Basic Recruitment, which is usually done AFTER the applicant is hired, although if the guidelines are strictly followed, recruitment used prior to hire *may* be used. For professional positions, which are generally the only types of positions Oberlin sponsors for permanent residence, the following recruitment is required:

a. 2 Sunday ads (or one Sunday advertisement and another ad in a professional journal), a 30 day job order with the State Workforce Agency (for the State of Ohio, the agency is the Ohio Department of Job and Family Services “ODJFS”), and 3 additional recruitment methods (out of 10 possibilities), including:

* Oberlin College’s Employment Web Site;
* Private Employment Agencies;
* Trade or Professional Organizations (newsletters, trade journals, web postings on their site, etc.);
* Employee Referral Program with Incentives (evidenced by a memo announcing the position and program);
* On Campus Recruiting (Notice issued or posted by the College, or perhaps The Source or PRESTO);
* Radio and Television Advertisements.

b. During the recruitment phase, the department must post an Internal Job Posting referred to as a **“**Notice of Filing**”** in a public place (usually near where other wage and safety notices are posted) for 10 consecutive business days. The salary of the offered position MUST be included on the notice. A salary range is acceptable, but if a range is provided the lower end of the range must be equal or greater to the prevailing wage determination for the position. Human Resources will prepare this notice for the department.

c. The PERM application must be filed no less than 30 and no more than 180 days of the first ad, and no sooner than 30 days after the last ad. The application can be filed as long as the hiring authority attests that none of the candidates is as available and qualified for the job opportunity as the applicant (in the case of teaching positions), or none of the candidates possess the minimum qualifications for the position (for non-teaching positions). Other special timing requirements must be strictly adhered to in order to file the labor certification.

d. Newspaper advertisement must:

* Contain the name of the employer;
* Direct applicants to report to or send resumes to the employer;
* Provide a job description and job requirements specific enough to apprise U.S. workers of the job opportunity; and
* Indicate the geographic location of the job opportunity.

3**.** Review the applicationsaccording to College policy and procedures.

4. In consultation with outside immigration counsel (for recruitment conducted after hire), select candidates to interview according to College policy and procedures.

5. Schedule telephone interviews as per College policy. If no candidates are qualified, proceed to next step. If any candidate is found to be qualified, they need not be hired by Oberlin, but the labor certification process may not continue.

6. Prepare a recruitment report that:

a. Describes the recruitment steps undertaken;

b. Describes the results of the recruitment (list the number of applicants hired, the number of workers who did respond to the position, and the lawful reasons each candidate was rejected);

7. The recruitment report and copies of all resumes must be provided to Human Resources, who will consult with outside immigration counsel.

8. Filing of the labor certification is done by outside counsel. Processing times vary from 3 to 8 months. In the event the application is audited, the department will be notified by Human Resources and processing time can increase up to 24 months.

9. Upon approval of the labor certification, the College must file an immigrant worker petition (Form I-140), with USCIS. This petition requires documentation similar to that required for the nonimmigrant visa petition. Either concurrently with, or subsequent to, filing of the I-140, the applicant and any dependent non-US citizen family members, must file an Application to Adjust Status on Form I-485. These documents will be prepared by outside counsel.

**Additional Considerations**

There are several fees associated with the employment of international faculty and professionals. The faculty member’s department is responsible for these fees, which can include legal fees and expenses, government filing fees, and recruitment expenses. The amount of these costs varies depending on the type of application. For an estimate of costs for a particular matter, please contact Human Resources.

Should a department be presented with an unrecognized status provided by an applicant during the application process or thereafter, be told or asked questions in person, in writing, or otherwise receive information so as to alert a department that someone has used a different name, fake name, fake documents, or is seeking the College’s assistance for sponsorship for immigration purposes, this information should be brought to the attention of Human Resources immediately. Failure to do so may place the College and individuals in a department at risk for civil fines and criminal penalties.

Please contact Human Resources for any questions concerning specific immigration matters.

1. The professor category is for a foreign national who enters the United State for the primary purpose of teaching, lecturing, observing, or consulting at accredited post-secondary academic institutions, museums, libraries or similar types of institutions on a short-term basis. A professor may also conduct research, unless disallowed by the sponsoring organization. [↑](#footnote-ref-1)
2. This category is for a foreign national who enters the United States for the primary purpose of conducting research, observing, or consulting in connection with research projects at research institutions, corporate research facilities, museums, libraries, post-secondary accredited academic institutions, or similar types of institutions. A research scholar may also teach or lecture, unless disallowed by the sponsor. The research scholar or professor’s appointment to a position shall be temporary. Incidental lectures or short-term consultations are permitted for both professors and research scholars with the approval of the College’s Responsible Officer so long as they are directly related to the objectives of the participant’s program, and do not delay the exchange program’s completion date. Such activities MUST be pre-approved by the responsible officer. [↑](#footnote-ref-2)
3. The *Occupational Outlook Handbook* (<https://www.bls.gov/ooh/>) provides information on what workers do; the work environment; education, training, and other qualifications; pay; the job outlook; similar occupations; and sources of additional information. [↑](#footnote-ref-3)
4. “Permanent residence” is the process by which a foreign national in the United States applies to United State Citizenship and Immigration Services (USCIS) to change their status from a nonimmigrant to an immigrant status. A permanent resident is commonly known as a “green card” holder, and is allowed to live and work in the United States without restriction. [↑](#footnote-ref-4)
5. Permanent position” does not mean that the employment of the international professional/faculty member is permanent, but that the position itself is a permanent fixture at the College (and is not temporary employment). All tenure-track positions are considered “permanent.” Visiting faculty positions and Fellows are not. [↑](#footnote-ref-5)
6. This document does not address those employment-based immigrant petitions that do not require labor certification, as such circumstances do not often arise at Oberlin. Should your department require additional information on other immigration classifications, please contact Human Resources. [↑](#footnote-ref-6)