

## **107: Employment of Foreign Nationals Policy**

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### **I. Introduction**

The University's Office of Human Resources is responsible for the implementation of University policies with respect to faculty, staff and students. The Office of Human Resources operates as the office for information and resources for the University's faculty and staff, and therefore, will be responsible for processing all applications concerning the employment of foreign nationals. Applications will only be processed by the University when sponsorship is appropriate, as determined by the laws governing employment and sponsorship of foreign nationals. The Federal government has established strict requirements with respect to employment based immigration status and nonimmigrant employment status. Thus, the University will only function as the petitioner when permitted by law.

This policy applies to applicants for employment, employees and hiring departments of Lincoln University. It is intended to provide guidance regarding the application for and sponsorship of foreign nationals for entry into the U.S. under the H-1B visa classification or Permanent Residence immigration status.

### **II. Definitions**

For purposes of this policy, the following definitions apply in the context of Lincoln University's sponsorship and employment of Foreign Nationals.

A. Application for Permanent Employment Certification: ETA Form 9089 is filed with the Department of Labor by an employer seeking labor certification to permanently employ a foreign worker in the United States, which is a prerequisite to petitioning the USCIS for immigration of an alien worker.

B. Designated Attorney: An attorney approved in advance by the Vice Presidents for Academic Affairs, Fiscal Affairs, and Student Affairs to represent the University in immigration matters.

C. Employee: An individual employed by Lincoln University who performs services that are subject to the will and control of the institution in terms of what must be done and how it will be done. An employee is paid through the payroll system, with accompanying tax withholding as provided by law.

D. Foreign National: An individual who is not a citizen, permanent resident, or resident alien of the United States.

E. H-1B: A common visa classification under which a foreign national enters the United States temporarily for the purpose of employment in a specialty occupation and is valid for the period of employment specified on the Labor Condition Application. For the University's

purposes, the visa classification is issued to a foreign national who has specialized education credentials and who has been offered a position requiring the application of a theoretical and specialized body of knowledge acquired in his/her degree program. A foreign national cannot obtain H-1B status on his/her own, but must have a sponsoring employer.

F. Immigrant Petition for Alien Worker: Form I-140 is filed with the USCIS by the sponsoring employer on behalf of a prospective or current foreign national employee who is inside or outside the United States and who may qualify under one or more employment based (EB) immigrant visa classifications.

G. Labor Certification Application (LCA): An application required by and submitted to the Department of Labor for the purpose of assuring that the admission of a foreign worker to the United States workforce whether on a permanent or temporary basis, will not adversely affect the job opportunities, wages, and working conditions of similarly employed United States workers.

H. Labor Condition Application for Nonimmigrant Workers (LCA): ETA Form 9035 or 9035E is electronically filed with the Department of Labor as a prerequisite to petitioning the USCIS for H-1B nonimmigrant visa classification.

I. Nonimmigrant: A citizen of another country who has been admitted to the United States for a temporary period and for a specific purpose.

J. Permanent Resident: An individual who has been lawfully admitted to the United States to live and may also be referred to as an immigrant or holder of a green card.

K. Petition for a Nonimmigrant Worker: Form I-129 is filed with the USCIS by the sponsoring employer on behalf of a prospective foreign national employee.

L. Sponsoring Employer: An employer who petitions on behalf of an alien for entry into the United States.

M. U.S. Citizenship and Immigration Services (USCIS): A component of the Department of Homeland Security responsible for the administration of immigration and naturalization matters. The USCIS was formerly the U.S. Immigration and Naturalization Services (INS) prior to its transition to the Department of Homeland Security on March 1, 2003.

### **III. Policy**

It is the policy of Lincoln University to only employ foreign nationals that qualify for temporary or permanent admission to the United States based on employment. Therefore, employment of foreign nationals will only be authorized when the provisions of this policy and the conditions set forth by the Department of Labor and USCIS are met.

Lincoln University will typically sponsor foreign nationals who qualify as full-time, regular employees in tenured and tenure-track academic job classifications provided the appropriate Dean and Vice President agrees to support the application. These positions include Professor,

Associate Professor, Assistant Professor, and Instructor. A department may request an exception if unique circumstances justify the sponsorship of a particular employee as outlined below.

Lincoln University normally does not sponsor foreign nationals in the following position classifications:

- Non-tenure track academic positions such as lecturers, research professors and/or clinician educators;
- Post-doctoral fellow/researcher positions; and
- Non-academic staff positions such as programmer-analyst, technical support specialist, software developer or laboratory technician.

***Any sponsorship must receive prior approval by the Vice President of the primary Department in which the foreign national will be working. Under no circumstances may an employee of Lincoln University knowingly employ or contract employment with an unauthorized foreign national.***

#### **IV. Procedure**

##### **A. H-1B Classification**

When Lincoln University seeks to hire a foreign national for short-term employment in the United States under the H-1B visa classification, Lincoln University, as the sponsoring employer will first obtain a certification from the Department of Labor, and then file both the certified Labor Condition Application and Form I-129 Petition for Nonimmigrant Worker with USCIS. The certification may be obtained by electronically submitting a Labor Condition Application for Nonimmigrant Workers ETA Form 9035E at [www.lca.doleta.gov](http://www.lca.doleta.gov). Form I-129 can be found at [www.uscis.gov](http://www.uscis.gov). The qualifying criteria and filing process are available on the aforementioned websites. The required filing fees as set forth by USCIS must be included with each filing. The foreign national seeking H-1B status is responsible for the USCIS base filing fee, unless otherwise agreed in writing by the foreign national and the University. The University submits the Fraud Prevention and Detection Fee.

##### **B. Permanent Resident Status**

Lincoln University may sponsor a current or prospective foreign national employee for Permanent Resident Status based on employment. Depending on which of the four employment based visa classifications is selected, the University will commence the process by filing a Labor Certification Application, which in the University's case would be ETA Form 9089 application for Permanent Employment Certification. This Form is available at [www.dol.gov](http://www.dol.gov). Once the application is certified/approved by the Department of Labor, Lincoln University will then petition the USCIS by filing Form I-140 Immigrant Petition for Alien Worker along with a copy of the certified Labor Certification Application. The Petition must be accompanied by the required fee as provided by USCIS. The parties' fees and costs allocations are discussed below in detail.

**A copy of all applications and petitions filed in support of a foreign national should be kept on file at Lincoln University.**

### C. Miscellaneous

Although Lincoln University cannot guarantee the issuance of an H-1B visa or that Permanent Residency will be granted in each of the applications and petitions it supports, it is committed to assisting a University Designated Attorney in filing the necessary paperwork.

Any foreign national sponsored by Lincoln University for Lawful Permanent Residence must use the services of a Lincoln University Designated Attorney to prepare and file the applicable immigration forms with the Department of Labor and USCIS. The Office of Human Resources maintains a list of such Designated Attorneys. Although only Designated Attorneys may prepare and file the legal documents necessary for sponsorship by the University, the foreign national may retain his/her own counsel to consult with the Designated Attorney at his/her own cost.

All foreign nationals seeking sponsorship with Lincoln University for permanent residency should be aware that Lincoln University will pay the fees or costs the Department of Labor *requires* sponsoring employers to pay at the time the Labor Certification Application is submitted, including but not limited to the University's attorney's fees and advertising costs associated with the Labor Certification Application. The foreign national is responsible for the USCIS filing fees, his/her attorney's fees, and other costs associated with obtaining permanent residency status. The Office of Human Resources will notify the foreign national which fees and costs will be borne by Lincoln University at the time the application is being prepared. The University is not responsible for guiding, instructing or administering the follow up procedures required for a foreign employee to adjust their status to a lawful permanent resident.

A foreign staff member, post-doctoral fellow/researcher or lecturer who is not eligible for sponsorship by the University remains eligible to explore with an immigration attorney the possibility of self-sponsorship for permanent residence under the "national interest waiver" or "alien of extraordinary ability" provisions available under U.S. Immigration Law. More information on these topics can be found on the USCIS website: [www.uscis.gov](http://www.uscis.gov). The Office of Human Resources maintains a list of area immigration attorneys for the convenience of foreign nationals associated with Lincoln University.

Questions concerning the application of this policy to a particular applicant, employee or hiring department should be submitted to the Director of Human Resources or his/her designee.