

# **Faculty Immigration Guidelines and Procedure (Effective 18 September, 2018)**

## **A. Purpose**

To establish and maintain a uniform policy regarding the administration and petition of Permanent Residency, H-1B and J1 petitions to enable individuals wishing to work in the United States to acquire legitimate visas allowing lawful employment in the United States and to fulfill New Mexico Tech's responsibility as an employer to those employees requesting status as permanent residents.

## **B. Policy and Procedures**

1. New Mexico Tech may establish and maintain H-1B and J-1 petition policies and procedures for the purpose of petitioning the United States Citizenship and Immigration Services (USCIS) for legal authorization to allow an individual the privilege of legally acquiring and maintaining employment while in the U.S.
2. Except in cases of tenure-track faculty, departments in need of Immigration and Naturalization Services (INS) will utilize their own Institutional/Departmental funds, and be solely responsible for any resultant charges levied for such services.
3. For tenure-track faculty, departments may request financial assistance for these costs from Academic Affairs. The rationale for this exception is that:
  - (i) Tenure-track faculty have a duty to attract external funding and they must have particular immigration status to apply for certain federal grants and contracts and
  - (ii) Tenure-track faculty have a duty to pursue intellectual property and commercialization and they must have particular immigration status for certain activities in these areas.Contractual funds must be used if the prospective hire is needed specifically for fulfilling a role funded by an external contract.
4. Special funding to pay for visa application services may be obtained from other sources, but only when provided the requesting department properly justifies its request and obtains permission from the President of New Mexico Tech.

## **C. Outline of Procedures for Obtaining Visas Including Processing Fees:**

1. *J Visa* – No fee is charged for processing paperwork for a visitor to acquire his/her J status. Human Resources will process the requisite form (DS-2019), and ensure that the visitor receives it. FedEx fees will be charged to the applicable department.
2. *H-1B Visa* – The I-129 petition packet is submitted to USCIS for approval to grant H-1B status to the visitor, thereby allowing his/her legal employment in the U.S.
  - a. The I-129 petition requires processing fees. In addition, USCIS requires a supplemental fraud and prevention fee. If the petition must be expedited, a premium processing fee will be assessed.
  - b. If dependents of the visitor already live in the U.S., form I-539 must be completed and attached to request a status change for dependents.
  - c. The I-539 form requires a processing fee, which is the only fee an employee must pay.

3. *Permanent Residency (PR)* – New Mexico Tech does not generate any of the petitions, documents, or mandated fees for an employee to obtain his/her PR status, with the faculty exceptions described below.

**Exception:** Effective July 16, 2007, the Department of Labor (DOL), [www.foreignlaborcert.doleta.gov/](http://www.foreignlaborcert.doleta.gov/), amended its regulations pertaining to employers' responsibilities towards the acquisition of Permanent Labor Certification applications. Before the employer can submit an immigration petition to the Department of Homeland Security (through USCIS), the employer must obtain:

- An approved labor certification request from the DOL's Employment and Training Administration (ETA). The DOL must certify to the USCIS that there are no qualified U.S. workers able, willing, qualified and available to accept the job at the prevailing wage for occupation in the area of intended employment.
- This required fee will be absorbed by the department where the individual seeking PR status is employed, with the exception of tenure-track faculty, in which case the department may seek financial assistance as noted above in B.2.
- In the case of tenure-track faculty who received financial assistance with their permanent residency application, should the faculty member resign or terminate their employment within five years of gaining permanent residency, they will owe New Mexico Tech full reimbursement of the financial assistance that was provided for their permanent residency application.
- An employer's transfer to the alien beneficiary of the employer's incurred costs in the labor certification or application process is strictly prohibited. The following steps are required when an employee is interested in applying for his/her PR status:
  1. An initial request to the VP of the Division must be submitted in writing.
  2. A form will be generated to the responsible department to notify it of the upcoming charges, and requesting account numbers to be charged.
  3. The Human Resources Department then will forward this request to an immigration attorney for processing.
  4. The charged fees for this service then will be assessed to the individual department, with the exception of tenure-track faculty, in which case the department may seek financial assistance as noted above in B.2.
  5. Fees for this service vary.

*Note: If the employee is requesting expedited filing she/ he must pay for the fee with personal funds.*

The President (or his or her designee, if any) has the sole discretion to approve the hire, and to initiate processing all Immigration and Naturalizations of PR, H-1B and J-1 visas and requests. Any offer of employment is contingent upon an applicant being able to provide the Human Resources office with required documentation proving eligibility to legally work in the United States.

For assistance with employment of faculty/staff under the H-1B and J-1 Visa categories, as well as Permanent Residency, contact Human Resources.