

SANTA CLARA UNIVERSITY SPONSORSHIP OF FOREIGN NATIONALS FACULTY POSITIONS

Sponsorship Eligibility

A foreign national who is appointed to a tenured or tenure-track faculty position is eligible for visa sponsorship assessment by Santa Clara University together with its legal counsel. Generally, SCU will support petitions for H-1B status for temporary work permission and Labor Certification applications for permanent residency status, assuming this can be legally accomplished. Non-tenure-track faculty must be able to present evidence that they are legally authorized to work in the United States or will be at the time of hire.

Definitions and Policy

H-1B: H-1B is a temporary non-immigrant status established under the Immigration and Nationality Act. It allows U.S. employers to employ foreign workers in specialty occupations for up to six years. Employees with approved I-140 Immigrant Petitions are legally eligible to extend their H-1B status beyond six years if they are unable to adjust to permanent resident status due to backlogs based on their country of birth. If an individual is found by SCU not to be eligible for an H-1B, SCU may, in its discretion, consider an alternative visa classification (such as TN or O-1).

Please note that in exceptional circumstances, if need be for work authorization, SCU may consider filing an alternative temporary work visa petition (E-3, H-1B1, TN or O-1)

EB-2/Labor Certification (Special Handling PERM): A U.S. College or University may file an application for Labor Certification (a.k.a. Special Handling PERM) with the Department of Labor (DOL) upon showing that the foreign national was the best qualified applicant for the position. The application must be filed with DOL within 18 months of SCU extending an offer of employment; otherwise, this process is no longer an option. If the application is approved, SCU will then file an I-140 immigrant petition with USCIS and the employee may file an application for permanent resident status in the U.S. if/when they are eligible based on immigrant visa availability.

EB-1B/Outstanding Researcher Classification: SCU favors the EB-2/Labor Certification (PERM) process for faculty pursuing permanent resident status, but recognizes there may be circumstances in which it is preferable to pursue the statutorily more challenging classification of Outstanding Researcher.

The Outstanding Researcher petition is appropriate for those who are internationally recognized as outstanding in their field. Important criteria for this classification include numerous scholarly publications (10 is a common benchmark), citations and/or discussion of the person's work by others in the field, and other evidence demonstrating that the individual is internationally recognized as outstanding in their field. SCU will consider pursuing this classification in lieu of EB-2/Labor Certification (PERM) if it becomes necessary because SCU is unable to meet the 18-month Labor Certification filing requirement or if there are unique and/or compelling circumstances. SCU will make this determination after consulting with our immigration counsel.

Option for Foreign National Who Is Not Eligible for EB-1 Process Upon Hire

SCU will cover the costs of only one immigrant visa or green card sponsorship for the employee. As stated above, SCU favors the EB-2/Labor Certification (PERM) process. Due to the time limitations associated with the PERM process and/or green card backlogs, SCU may choose to pursue the EB-1 option for certain

individuals. This decision is made after consultation with SCU's immigration attorney around the time the candidate is issued the offer letter.

Foreign national candidates who do not qualify for EB-1B upon hire, and who are impacted by the green card backlog, may later request to be sponsored for the EB-1B Outstanding Researcher once they have developed the necessary evidence for the classification, which generally includes publications, citations, discussion of one's work by others in the field in articles or reviews, awards for outstanding research that are regional, national or international in scope, peer reviews for journals or conferences, etc.. The foreign national would be required to use SCU's immigration attorney as this is an employer-sponsored category. All fees associated with the EB-1B process would be the responsibility of the foreign national. They may also choose to self-petition for an EB-1A, Extraordinary Ability petition at their own expense using a different immigration attorney, once they have developed the necessary evidence for the classification, which is generally publications, citations, article reviews, leadership at conferences, etc. SCU will continue with the PERM process as a backup in the event that the EB-1B is not approved.

Dean's Office Procedures

In addition to the recruitment and appointment procedures in the Policy on Recruitment and Selection of Faculty for Tenured and Tenure Track Appointments, the Dean's Office will ensure the following steps are taken for all tenured and tenure-track faculty searches:

Recruitment

For all tenured and tenure-track faculty searches, at least one advertisement stating the title, duties, and responsibilities of the position must be placed and must run for at least 30 calendar days before an offer is made to ensure that qualified applicants have an opportunity to respond to the advertisement. The ad must meet specific requirements for special handling PERM applications. If they are not met, it may be required that SCU posts one additional ad at a later time and reviews resulting applications.

The advertisement may be placed in a hard-copy national professional journal or in the *Chronicle of Higher Education*. If a print advertisement is run, the department must save original copies of the entire journal or the entire edition of the Chronicle to document that the advertisement for the job opportunity was placed. If run in a newspaper, at least one original tear-sheet of the advertisement showing the name of the periodical and the date(s) of publication must be maintained.

In the alternative, the advertisement may be run in an electronic or web-based national professional journal if the journal is one which typically advertises academic openings in the USA. The electronic or web-based journal's job listings must be viewable to the public without payment of subscription and/or membership charges. The advertisement for the job opportunity for which certification is sought must be posted for at least 30 calendar days on the journal's website. Documentation of the placement of an advertisement in an electronic or web-based national professional journal must include evidence maintained by printing out a copy of the ad on the first and last days the ad was run. Evidence of the start and end dates of the advertisement placement and the text of the advertisement are critical and if unavailable, could cause an application to be denied.

Of course, additional forms of recruitment should also be conducted. Copies of all recruitment materials and evidence of the start and end dates of all avenues of recruitment utilized should be preserved as the Department of Labor may ask to see copies and or evidence that national recruitment was conducted. Notes documenting interviews may also be requested. It is helpful to carefully preserve evidence of the selection process at the time the process is conducted.

Online Application

To determine whether sponsorship of a prospective tenured or tenure-track faculty member will be needed, each applicant is required to answer the following question on their application:

Are you legally authorized to work in the U.S.?

Will you now or in the future require employer visa sponsorship for continued work authorization?

Sponsorship Fees and Costs

- The University will pay legal fees and costs associated with obtaining non-immigrant status for the foreign national, so that the foreign national can work at SCU.
- The University will pay for the legally required fees and costs associated with the EB-2/Labor Certification (PERM) (step 1 of the legal permanent residency process).
- The University will pay legal fees and costs associated with the I-140 petition following the labor certification (step II of the legal permanent residency process for the EB-2). Note: If the University chooses to file for the EB-1 instead of the EB-2, it will pay the fees associated with the EB-1 I-140 petition. The EB-1 I-140 process does not require a PERM labor certification, so the I-140 becomes the first of a two-step process for permanent resident status.
- The University will pay legal fees and costs associated with the Adjustment of Status for the foreign national only (step III of the legal permanent residency process).
- The University will pay legal fees and costs associated with post-six-year H-1B extension petitions when USCIS has approved SCU's I-140 petition but the foreign national's priority date is not yet current.
- Any related fees and costs associated with a spouse and/or dependents are the responsibility of the foreign national.
- Any other fees and costs, such as those associated with international travel or visa stamping advice or the medical exam requirement for the foreign national applying for a green card, are the responsibility of the foreign national.
- All temporary non-immigrant status matters and EB-2/Labor Certification (PERM) matters related to employment with SCU must be handled by SCU's immigration counsel. If SCU's attorney determines that the EB-1B is the best route to take at the time of hire, then the EB-1B matter must be handled by SCU's immigration counsel.
- The College/School, department, or any other entity of Santa Clara University is not authorized to pay for any other fees or costs associated with the sponsorship of a foreign national or related fees and costs associated with the spouse and/or dependents.

Upon Acceptance of Offer

The Dean's Office, with the assistance of the Department, prepares the following documentation to support the filing of a PERM "Special Handling" labor certification application and will keep it on file until it is requested by the immigration attorney:

1. For a print advertisement, documentation must be either the entire journal in which the advertisement for the job opportunity was placed, or the tear-sheet of the advertisement showing the name and the date(s) of publication. For an electronic or web-based advertisement, documentation must include evidence of the start and end dates of the advertisement placement. The evidence should include a printed copy of the ad from the first and the last days the ad ran and must include the entire text of the advertisement. At least one of these forms of documentation must be kept in the file until the applicant has been granted residence or has departed from SCU.
2. Evidence of all other recruitment sources utilized. Such evidence may be printouts of hard-copy or online ads, evidence of emails to other institutions, evidence of postings at other universities, evidence of advertising at job fairs or conferences, etc. If actual printouts are not available, evidence may include copies of contracts or invoices for the ads or anything else that will prove the ad ran, in what medium or publication, on what dates. The text of the ads must be included. (Please download the ad on the first and last days that it is up.) Emails confirming an ad was posted and/or invoices for ads may be helpful and should be preserved.
3. A list of the candidates who responded to the ads within the time period designated by the school, along with each resume and cover letter, must be retained in the original. The ad to which each applicant responded should be included if known.
4. A list of the names of all candidates who were interviewed, including information about where and when the interview took place, who interviewed the candidate, whether the interview was conducted by telephone or in person, the relevant positive and negative factors influencing each decision (including why candidates were or were not selected), and the relevant factors considered in deciding who would receive a job offer. Reasons need to be legitimate job-related reasons that are non-discriminatory.
5. Copy of offer letter (or other document) evidencing the date of selection of the foreign national candidate. Note that the Special Recruitment PERM application must be filed within 18 months of this selection date; hence, the date of selection must be verifiable.
6. Name(s) of any U.S. candidate(s) who was (were) offered the position before it was offered to the foreign national, and information about why the U.S. candidate did not take the position.

Upon receipt of the signed offer letter, the Provost's Office begins to track the sponsorship process with the University's immigration counsel. Immigration Counsel will officially begin work on the process after the foreign national commences employment with SCU. The Dean's office will provide documentation of all recruitment conducted to SCU immigration counsel to assess whether it meets the special handling requirements.

Non-Tenure-Track Faculty Searches

To communicate up front to applicants that Santa Clara University does not sponsor visas or other applications to obtain employment for non-tenure-track faculty (except in some cases Visiting Faculty as detailed below), the Deans' Offices will take the following steps:

Advertisement

Advertisements will include the following statement:

SCU does not sponsor any applicants for work visas for this position. The successful candidate must be able to provide evidence of identity and legal authorization to work in the United States.

Online Application

To determine whether the individual will be able to present evidence that they are legally authorized to work in the U.S., each applicant is required to answer the following question on their application:

Are you legally authorized to work in the U.S.?

Will you now or in the future require employer visa sponsorship for continued work authorization?

Faculty Categories Eligible for Non-immigrant Status

SCU may support applications for J-1, TN, E-3, or similar non-immigrant visas for foreign nationals who are appointed to the faculty categories listed below (see corresponding section of *Faculty Handbook* for definition of each category) in accordance with applicable legal requirements and University policy.

Appointments-in-Residence (Distinguished artists, scholars, scientists, engineers, executives, states persons. Section 3.1.2.2.3)

Visiting Faculty (Section 3.1.2.3.1)

Postdoctoral Fellows (Section 3.1.2.3.2)

Any questions that arise during this process should be directed to the Provost's Office.

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