

IMMIGRATION ISSUES ARISING IN THE ADVERTISING/SEARCH/APPOINTMENT PROCESS FOR FACULTY POSITIONS

United States citizens and lawful permanent residents of the United States ("green card" holders) are authorized to work permanently in this country. Generally, permanent residents can work without restriction; however, there may be exceptions in instances of access to certain highly classified and/or dangerous materials.

This guidance addresses the faculty search process as it interfaces with individuals who are neither U.S. citizens nor lawful permanent residents of the U.S. For purposes of this document, they are called "foreign".

Tenure-Track Searches for Faculty with Some Classroom Teaching Responsibilities: Advertising for the Position, Contacts with Applicants, Letters of Offer, Visa Sponsorship

Almost all tenure-track faculty searches draw some foreign applicants: students completing U.S. degrees, individuals working elsewhere in the U.S. or candidates from abroad. In some searches foreign applicants predominate the pool. Every year UNL hires 10-15 foreign applicants for tenure-leading positions. Before he or she commences employment at UNL, the successful candidate must hold an appropriate visa classification, most frequently H-1B. Shortly thereafter, the university will seek a "labor certification" on behalf of that new foreign faculty member. This is a determination by the U.S. Department of Labor that the individual was selected as the best qualified, available candidate pursuant to a full, fair and open search. In most instances labor certification is the prerequisite for the university's immigrant petition on that person's behalf and, ultimately, for the faculty member's application for permanent resident status and the derivative application(s) of his or her dependent family members.

For a labor certification to be granted the U.S. Department of Labor requires certain procedures to be followed. While they are not contrary to university policies or practices, they impose additional elements which must be precisely followed if we are to obtain a labor certification on behalf of our new faculty member.

Consequently, to protect both the university (seeking to hire and retain the best faculty) and our faculty, (seeking to join UNL and remain lawfully in the U.S.) **the following guidance should be considered in every search for tenure-track faculty with at least some formal classroom teaching responsibility.** It does not apply to searches for faculty who have only research or extension responsibilities, even if tenure-track.

Advertising the Position

1. There must be **at least one print advertisement in a national professional journal.** In other words, **online advertising alone is not sufficient.**
2. The print ad must identify the basics of the position and can refer potential applicants to a web site for details.
3. At minimum, the print ad should identify the university, the location of the employment (Lincoln, Omaha, Scottsbluff, etc.) the position and the minimum qualifications required. Needless to say, the successful candidate must meet all stated requirements, no matter how attractive an applicant who does not meet them may be.
4. The minimum qualification should identify the degree required, For example, " a Ph.D. in Civil Engineering" or "a Ph.D. in Biochemistry, Molecular Biology or a related field". The ad should not merely ask for "an earned doctorate" without identifying the field or a set of related fields.
5. If a candidate may be hired "ABD", so state. For example "a Ph.D. or ABD in Finance" or "the completion of all requirements for the Ph.D. in Textiles except for the dissertation". We may not obtain a "labor certification" if the successful applicant does not meet the standard specified in the ad.

6. If a sub-specialty is required, it must be stated ("in 20th Century French Literature").
7. If post-doctoral experience is required, it must be stated in measurable terms. For example, "two years post-doctoral experience in Animal Nutrition".
8. If a professional license is required, it must be stated. ("registration as an Architect")
9. It is advisable to not state "preferred" qualifications. The Department of Labor, charged with protecting the domestic labor market, views preferred qualifications as required qualifications because a domestic applicant who does not meet a preferred qualification would be deterred from applying. Consequently, if a qualification is truly required, state it; otherwise, do not.
10. If a department is seeking someone who may be able to teach or collaborate in a related field, state that in the duties/responsibilities part of the advertisement or position announcement so that it can be duly considered in the selection process.

Interaction with Candidates

During the search process, it is appropriate to ask all qualified applicants or all those on a short list, not only applicants thought to be foreign, about eligibility to be employed in the U.S. This information provides guidance as to whether the applicant, if offered a position at UNL, can be employed immediately, whether the university needs to initiate immigration processing on behalf of that applicant and whether there is sufficient time to employ the applicant by the intended starting date of employment.

1. It is not permissible to ask an applicant specifically to indicate his or her immigration status or visa classification.
2. An applicant may not be asked about his or her nationality. To ask such question violates federal law. (It sounds almost foolish to say this but one should not assume that someone with "a foreign sounding name" or "someone with an accent" is foreign.)
3. Only two questions about visas are permitted. They must be asked of all applicants, domestic as well as foreign. (a) "Are you currently authorized for employment in the United States, yes or no?" and (b) "Will you now or in the future need sponsorship for a visa status (e.g., H-1B or permanent residence), yes or no?" If the answer to (a) is "yes" and the answer to (b) is "no", the university should not expect to sponsor them for a visa and no further discussion is necessary. If the candidate responds "yes" to needing sponsorship, visa status can be discussed. The university wants to hire the best qualified applicant and does sponsor individuals for the H-1B visa classification and for permanent resident status. Candidates are often aware of visa-related issues and may raise the question themselves. [If a department or the university were to use an online or paper application for faculty positions, this issue could be raised in that format as well.]

Making an Offer

Before making an offer to a faculty candidate who will need visa sponsorship, please contact Peter Levitov, Associate Dean of International Affairs at UNL and immigration attorney for the University of Nebraska, at 472-3265. He will advise you on the candidate's eligibility for employment at UNL (both temporarily and on a permanent basis) and, if your offer is accepted, assist you in obtaining the appropriate visa classification for the candidate to commence employment. Time, of course, is of the essence because, by law, a foreign individual may not be employed unless he or she is authorized. (Furthermore, by law, an employer may not employ an individual without authorization). After the faculty member joins the University, Associate Dean Levitov will also lend assistance in obtaining a labor certification and permanent resident classification for that individual.

In the infrequent situation when the University is considering making an offer of a **tenured** position to a foreign candidate, it is critical to contact Associate Dean Levitov before an offer is made.

With regard to letters of offer to individuals who are not U.S. citizens or permanent residents, please include the following statement:

“This offer is contingent upon your having employment authorization from the U.S. Citizen and Immigration Services to assume this position. We will assist you in obtaining the appropriate visa classification.”

Please note: The University assumes a significant responsibility in undertaking visa sponsorship. Sponsorship must be consistent with applicable laws and regulations as well as with institutional guidelines. Consequently, University policy requires that departments process all immigration applications and petitions relating to foreign faculty and staff through International Affairs. A unit may not relinquish UNL control of visa sponsorship to an outside attorney, even if an employee or prospective employee offers to pay for such services.

Preparing the Labor Certification Application, Immigrant Petition, Permanent Residence

International Affairs works closely with hiring units to prepare the application for labor certification, utilizing sample forms and letters for many of the supporting materials. Every fall it convenes chairs/heads, departmental secretaries or administrative assistants and the new foreign faculty members for an explanation of the process, the distribution of materials and a question and answer period.

Following the approval of the labor certification, International Affairs works with the department and the faculty member to prepare the immigrant petition and file it for the university. In addition, International Affairs assists the foreign faculty member (and dependent family members) to prepare and file the application(s) to adjust status to permanent residence.

Tenure-Leading Positions without Classroom Teaching Responsibilities & Non-Tenure-Leading Faculty Positions (e.g., Grant-funded Research Faculty Positions)

The law treats faculty positions that do not involve any classroom teaching differently than faculty positions that do not involve classroom teaching. For research faculty positions please contact Associate Dean Levitov about the “outstanding professor or researcher” path to permanent residence.

Professional Non-Faculty Positions

UNL policy restricts the type of position that can be sponsored for labor certification and permanent residence: *“The University may undertake sponsorship for labor certification and/or permanent residence only on behalf of (1) a faculty member with the rank of Assistant Professor/Research Assistant Professor or higher or (2) in certain instances, a professional staff member who in the opinion of the cognizant dean, is expected to make a substantial contribution to the University and remain with the institution for a significant length of time.”*

If a department is seeking to fill a non-faculty professional position and anticipates non-citizens being among the best qualified applicants - - - and the cognizant dean seeks an exception to the UNL policy - - - , please contact Associate Dean Levitov before initiating the search process. He will assist you and Human Relations to draft the job description, including the responsibilities and qualifications, prepare the position announcement and place the advertisements so that, if a foreign candidate emerges atop the search, there may be a mechanism for assisting that individual to obtain permanent residence based upon this employment.

Foreign employees in positions at UNL that already have been filled are not likely to qualify for labor certification.