IMMIGRATION OPTIONS FOR INTERNATIONAL RESEARCHERS AND FACULTY

1) J-1 Exchange Visitor

- Categories

  - Professors-a professor is an “individual primarily teaching, lecturing, observing, or consulting at post-secondary accredited educational institutions, museums, libraries, or similar types of institutions. A professor may also conduct research, unless disallowed by the sponsor.” The maximum period of stay in this category is five years.

  - Research Scholars- a research scholar is an "individual primarily conducting research, observing, or consulting in connection with a research project at research institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions. The research scholars may also teach or lecture, unless disallowed by the sponsor." The maximum period of stay in this category is five years.

  - Short-term Scholars- a short-term scholar is “a professor, research scholar, specialist, or a person with similar education or accomplishments coming to the United States on a short-term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions.” The maximum period of stay in this category is six months.

  - Specialists- a specialist is “an individual who is an expert in a field of specialized knowledge or skill coming to the United States for observing, consulting, or demonstrating skills.” The maximum period of stay in this category is 1 year.

- Restrictions

  - Two-year Home Country Physical Presence Requirement-Section 212(e) of the Immigration and Nationality Act requires exchange
visitors and their dependents who are subject to the two-year home country physical presence requirement to return to their home countries and be physically present there for an aggregate of two years before being eligible to return to the United States as a permanent resident, H status or L status. Exchange visitors subject to this requirement are also not eligible to change their nonimmigrant status to any other nonimmigrant status in the United States except to A (diplomatic) and G (international organizations) status.

- An exchange visitor is subject to the requirement if he/she falls into any one of the following categories: 1) the exchange program was financed directly or indirectly, by the United States government or a foreign government for the purpose of the exchange; 2) the field the exchange visitor is coming to conduct research in is a field which is listed on the State Department’s skill list; 3) the exchange visitor is coming to the U.S. to receive “graduate medical education or training.”

- **Twelve-month Bar after Previous J Participation**- Time spent in the United States in J status in the 12-month period immediately preceding the start date on the new DS-2019 may affect a person’s eligibility for a J-1 in the professor or research scholar category. A person who has been in the United States in J-1 status in the 12 month period immediately preceding the start date of the new DS-2019 may only return in J-1 status in the professor or research scholar category if: 1) the participant is transferring to the sponsor’s program from another J-1 program in the United States; or 2) the participant’s presence in the United States was of less than six months duration; or 3) the participant’s presence in the United States was pursuant to a short-term exchange activity.

- **2-year bar on repeat participation as a J-1 professor or research scholar**- A person who has been in the U.S. as a J-1 in the professor or research scholar category is not eligible for participation as a J-1 in the professor or research scholar category for a period of 2 years following the end date of his/her program as identified in the SEVIS system. It is very important that DIS is notified in the event that a J-1 program is completed early so that we can enter an accurate completion date in SEVIS. If a program is completed early, and DIS is not notified, the 2 year bar will not be activated until the expiration date listed on the DS-2019, which may cause a delay in an exchange visitor’s ability to return to the U.S. in J-1 status as a Research Scholar or Professor.
- No Clinical Care Allowed: Researchers coming on a J-1 are not allowed to provide patient care. Patient contact is only allowed if it is incidental to his/her research.

- Processing Time: 60 days for the Department of Immigration Services (DIS) to process the application plus the amount of time it takes for the employee to get a visa. (90 days is usually enough time for DIS to process the application and for the applicant to get a J-1 visa and enter the U.S.)

2) H-1B Temporary Worker in a specialty occupation: An H-1B allows an international researcher to come to the United States to work for up to 6 years in a "specialty occupation" for a designated employer. A "specialty occupation" is defined as an occupation, which requires at least a bachelor's degree in a specific field. Persons subject to the 212(e) two-year residence requirement of the J visa are not eligible for an H-1B until the two-year requirement is met or a waiver of the requirement is obtained.

- Wage Requirements: OHSU must pay an H-1B employee the actual wage rate or the prevailing wage rate, whichever is higher.
  - Actual Wage Rate: is the wage rate paid by OHSU to all employees with similar experience and qualifications in the same position as the H-1B.
  - Prevailing Wage Rate: is obtained from the Department of Labor and is the wage paid to individuals in similar positions in the Portland Metropolitan area.

- Labor Condition Application (LCA): the LCA is a requirement of the Department of Labor (DOL) and OHSU must file and obtain a certified LCA before filing an H-1B petition with USCIS. The purpose of the LCA requirements is to protect U.S. workers. The LCA contains several attestations that OHSU is required to make before DOL will certify it. The attestations are as follows:
  - OHSU will pay the required wage rate to the H-1B worker (the actual wage rate or the prevailing wage rate, whichever is higher).
  - OHSU will offer the same benefits package on the same basis to similarly employed U.S. workers and H-1B workers.
  - The employment of H-1B workers will not adversely affect the working conditions of workers similarly employed in the area of intended employment.
At the time of filing the LCA, there is no strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification at the place of employment. If a strike or lockout occurs after the LCA is submitted, OHSU will notify the DOL within three days of its occurrence.

A copy of the LCA has been, or will be, provided to each H-1B worker employed pursuant to the LCA, and the employer has also provided notice of filing the LCA to the bargaining representative of the employer’s employees in the occupational classification, or if there is no bargaining representative, OHSU has physically posted notice of the filing of the LCA on the employer’s premises.

If OHSU terminates the H-1B employee prior to the end date of the H-1B petition validity period, for any reason, the sponsoring department is required by federal law to pay reasonable costs of return transportation to the H-1B employee’s last place of residence abroad. In addition, if the H-1B is not officially withdrawn, the department could be held liable for the employee’s salary for the duration of the H-1B approval notice per Department of Labor regulations. Therefore, it is very important that DIS is notified if an H-1B employee is going to be terminated prior to their expiration date.

In most cases, the H-1B approval notice must be received by OHSU prior to the applicant beginning employment in H-1B status. However, pursuant to portability provisions, a person currently in H-1B status with another employer in the U.S may transfer to OHSU and begin work before the H-1B application is approved by USCIS. Under portability, the employee may begin work once OHSU receives the official receipt notice from USCIS and the H-1B employee meets the following requirements: 1) is in H-1B status; 2) is in lawful nonimmigrant status; 3) has only engaged in lawful employment, and 4) OHSU has submitted a non-frivolous petition before the expiration of the H-1B’s current period of authorized stay.

Processing Time-Approximately 5-6 months from the time DIS receives the completed H-1B packet. This allows time for DIS to prepare the application, receive approvals from the Department of Labor and U.S. Citizenship & Immigration Services, and for the applicant to get a visa to enter the U.S. There is the option of premium processing for an additional fee made payable to the Department of Homeland Security which will reduce processing time to approximately 2-3 months. (as of November 2016 the premium processing fee is $1225)
3) **E-3 (Australian citizens only)** - The E-3 is an employment-based status for Australian citizens, which may be requested for an initial period of up to 2 years for a designated employer. It may be renewed for additional 2 year intervals indefinitely provided the employee in E-3 status is able to demonstrate that he/she does not intend to remain or work in the U.S. permanently. An E-3 requires a bachelor’s or higher degree in the specific discipline or its equivalent as a minimum entry into the occupation in the United States.

- **Wage Requirements** - OHSU must pay an E-3 employee the actual wage rate or the prevailing wage rate, whichever is higher.
  - *Actual Wage Rate* - is the wage rate paid by OHSU to all employees with similar experience and qualifications in the same position as the E-3.
  - *Prevailing Wage Rate* - is obtained from the Department of Labor and is the wage paid to individuals in similar positions in the Portland Metropolitan area.

- **Labor Condition Application (LCA)** - the LCA is a requirement of the DOL and OHSU must file and obtain a certified LCA before filing an E-3 petition with a U.S. Consulate or USCIS. The purpose of the LCA requirements is to protect U.S. workers. The LCA contains several attestations that OHSU is required to make before DOL will certify it. The attestations are as follows:
  - OHSU will pay the required wage rate to the E-3 worker (the actual wage rate or the prevailing wage rate, whichever is higher).
  - OHSU will offer the same benefits package on the same basis to similarly employed U.S. workers and E-3 workers.
  - The employment of E-3 workers will not adversely affect the working conditions of workers similarly employed in the area of intended employment.
  - At the time of filing the LCA, there is no strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification at the place of employment. If a strike or lockout occurs after the LCA is submitted, OHSU will notify the DOL within three days of its occurrence.
  - A copy of the LCA has been, or will be, provided to each E-3 worker employed pursuant to the LCA, and the employer has also provided notice of filing the LCA to the bargaining representative of
the employer's employees in the occupational classification, or if there is no bargaining representative, OHSU has physically posted notice of the filing of the LCA on the employer's premises.

- **Processing Time** - Approximately 2 months from the time DIS receives the completed E-3 packet if the applicant applies at a U.S. Consulate abroad. If applying for a change of status to E-3 in the U.S. the processing time is approximately 4-5 months.

4) **TN (Canadian and Mexican citizens only)** - this employment category was developed as part of the North American Free Trade Agreement (NAFTA), to facilitate the entry of Canadian and Mexican citizens to the United States to engage in professional business activities on a temporary basis. Individuals wanting to come to the U.S. in TN status can be admitted for a period of up to three years and extensions are allowed in three-year increments. An extension of TN status can be done by either re-entering the U.S. through an authorized port of entry or by filing an extension application with USCIS.

- **List of Occupations** - Only occupations listed in the NAFTA treaty can serve as the basis for TN employment. The list also stipulates the minimum qualifications for entry into the U.S. for each occupation.

- **Application Requirements** - for entering the U.S. in TN status.
  - Proof of Canadian or Mexican citizenship (Mexican citizens must present a passport as proof of citizenship since they are required to have a valid TN visa).
  - A Valid Visa (Mexican citizens only).
  - A detailed letter from the employer including:
    - an affirmation that the profession of the applicant is on the list of occupations
    - description of the duties the applicant will perform
    - reference to the anticipated length of stay
    - a review of the educational qualifications or appropriate credentials demonstrating the applicant has professional level status
    - salary
    - confirmation that the applicant meets all license requirements.
  - Evidence that the individual has the required credentials for the job as stated in the NAFTA treaty. This includes diplomas, transcripts, licenses, certificates or other documentation to verify the
applicant’s credentials. Any credentials obtained outside of the 
U.S., Canada, or Mexico should be accompanied by a credentials 
evaluation.

- Letters from previous employers or business records for proof of 
self-employment if work experience is required to meet the TN 
requirements.

- A statement that the purpose of entry to the U.S. is temporary. 
This can be stated in the employer’s letter but should also be 
articulated by the applicant when asked by the immigration officer.

- $50 filing fee (Canadian citizens only). Mexican citizens are not 
required to pay the $50 filing fee because they have to obtain a 
visa and pay a visa application fee.

- **Processing Time**- Under 1 month if a Canadian citizen since they only 
have to present the above documentation to the Immigration Officer at 
the U.S. port of entry to get TN status. Approximately 2 months if a 
Mexican citizen since they have to apply for a visa. An extension or a 
change of status to TN status in the U.S. via U.S. Citizenship & 
Immigration Services takes approximately 4-5 months.

5) **O-1 Worker of Extraordinary Ability**- An O-1 is for a worker of 
extraordinary ability. Unlike the H-1B and E-3, a prevailing wage 
determination does not have to be done. However, OHSU must prove 
that the researcher is one of extraordinary ability. Pursuant to regulations, 
an alien would have to provide at least three of the following forms of 
documentation to prove extraordinary ability:

   - Documentation of the researcher’s receipt of nationally or 
     internationally recognized prizes or awards for excellence in the 
     field of endeavor.

   - Documentation of the researcher’s membership in associations 
     in the field for which classification is sought, which require 
     outstanding achievements of their members, as judged by 
     recognized national or international experts in their disciplines or 
     fields.

   - Published material in professional or major trade publications or 
     major media about the researcher, relating to the researcher’s 
     work in the field for which classification is sought, which shall 
     include the title, date, and author of such published material, 
     and any necessary translation.

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Evidence of the researcher’s participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.

Evidence of the researcher’s original scientific, scholarly, or business-related contributions of major significance in the field.

Evidence of the researcher’s authorship of scholarly articles in the field, in professional journals, or other major media.

Evidence that the researcher has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.

Evidence that the researcher has either commanded a high salary or will command a high salary or other remuneration for services, evidence by contracts or other reliable evidence.

- **When Used**: if the applicant has a J-1 2-year residency requirement they can apply for an O-1 without meeting the 2-year requirement. If an applicant has maxed out time in H-1B status they can apply for an O-1.

- **Processing Time**: Approximately 6 months for the application to be prepared and receive approval from U.S. Citizenship & Immigration Services. Can request premium processing for an additional fee which will reduce the processing time by U.S. Citizenship & Immigration Services to 15 days unless there is a Request for Evidence. However, it will still take a few months to prepare the application in most circumstances.

### 6) Other Options

- **F-1 Optional Practical Training (OPT)**-allows students in F-1 status to work for up to 12 months in an occupation in their field of study during or after completing their degree. There is also an additional 24 month OPT extension for students with a STEM degree working for an employer registered in E-verify. A student applies for an employment authorization document with USCIS through their school’s international office. An employment authorization document for optional practical training takes about 3 to 4 months to receive.

- **J-1 Academic Training**- allows students in J-1 status to work for up to 18 months (post-docs 36 months) in their field of study during or after
completing their degree. Academic Training is applied for through the school’s international office and does not require an application to USCIS.

- **Employment Authorization Card** – A J-2 dependent, E-3 spouse, pending permanent resident, etc. can obtain an employment authorization card which will allow them to work in the U.S.

- **B-1 Business Visitor**- allows researchers to come to the United States to consult with business associates and to undertake independent research. A B-1 does not allow for payment for services but does allow for the payment of an honorarium and expenses in certain circumstances.