

IMMIGRATION REVIEW

HIGHLIGHTS...

...Institutions of higher education are exempt from the H-1B annual cap...

...Certain professors and researchers may qualify for exemption from labor certification...

...Visiting professors may “work for pay” when their speaking engagements are relatively short...

Our government recognizes the need for your institution to employ the best and brightest academics in the world. This is why colleges and universities are provided with a number of special immigration benefits when applying for nonimmigrant (H-1B, J-1, etc.) and immigrant (Green Card) visas. We trust the following articles will allow you to take advantage of the special immigration laws that benefit institutions of higher education.

Special Handling

The Department of Labor (DOL) provides a “special handling” procedure for the Green Card labor certification process involving college and university professors. Through this process, colleges and universities benefit not only from **expedited** processing times and **fewer** advertising requirements, but also the ability to make use of a competitive recruitment and selection process that took place up to **18 months** prior to submission of the application. The standard is 6 months.

How do you know who qualifies for special handling procedures? It’s easy; any college or university professor who is engaged in some classroom teaching is eligible for special handling. Unfortunately, other positions involving strictly research or non-teaching duties do not qualify.

What constitutes a competitive recruitment and selection process? Unlike regular labor certification cases, special handling allows you to review applicants based on the person who is “most qualified” for the job, and not just merely equally or minimally qualified. This gives you a much broader basis on which to disqualify potential job applicants and thus successfully obtain labor certification for your foreign-born professors.

How does the DOL calculate the 18-month period? For the purpose of the Green Card application, you can use recruitment efforts associated with the competitive recruitment campaign of the foreign-born professor for whom you are seeking a Green Card, provided that your selection of that professor occurred no more than 18 months ago.

H-1B Annual Cap Exemption

Recently, the CIS reported that the H-1B cap was exhausted on August 10, 2005 for FY2006. Despite most United States businesses being subject to an annual H-1B cap of 65,000 visas, Congress has recognized the need for colleges and universities to have access to skilled foreign-born temporary workers and has **exempted** all “institutions of higher education” from the annual cap. This exemption is a great advantage that allows you to seek foreign-born professionals year-round without concern for the limited number of H-1B visas. Any employee—not just professors—of an institution of higher education, whose job duties qualify as a “specialty occupation” under the H-1B visa program, would be able to take advantage of the cap exemption.



H-1B ACWIA Fee Exemption

Most businesses, despite not being able to meet their labor needs with qualified United States citizens, are unable to take advantage of the H-1B visa program and talent of foreign workers due to the high costs involved in the process. In addition to the CIS filing fees, fraud fee, and any related processing fees for the H-1B petitions, most employers must also pay up to a \$1,500 ACWIA fee.

Fortunately, all “institutions of higher education” are **exempt** from the ACWIA fee.

B-1 Visa Acceptable for “Honorarium” Payment for Usual Academic Activities

The B-1 “business visitor” visa is a visa classification for persons participating in scientific, educational, professional, religious, or business conventions taking place at an institution of higher education, affiliated nonprofit entity, or a nonprofit or governmental research organization. Usually B-1 visitors may not “work for pay” while in the United States. There is a special exemption for visiting professors when their speaking or teaching engagements are relatively short.

A professor in this category may accept an honorarium payment and reimbursement for associated incidental expenses for “usual academic activities” from an academic institution as long as the engagement does not last more than 9 days at a single academic institution and as long as the individual does not accept more than five such honoraria in a six-month period.

Labor Certification Exemption for “Outstanding Researchers and Professors”

Certain professors and researchers, who are recognized internationally as outstanding in a specific academic area and have at least 3 years of experience in teaching or research, may qualify for the first employment-based preference category (EB1), and thus be **exempt** from labor certification entirely.

This category applies only to professors and researchers who have reached the pinnacle of their field internationally. This assertion must be well documented with such evidence including: receipt of major prizes or awards; membership in an organization requiring outstanding achievement; published material in professional publications written by others about the applicant’s work; evidence of person’s participation as a judge of the work of others; evidence of original scientific research; and authorship of scholarly books or articles in the field.

J-1 Visa Program Period Extension

The Department of State (DOS) created the J-1 Exchange Visitor Program to enhance understanding between people of the United States and other countries through educational and cultural exchanges. One category of eligible J-1 Program participants is “Professors and Research Scholars,” consisting of visitors coming to the United States primarily for teaching, lecturing, observing, or consulting at accredited post-secondary educational institutions, museums, libraries, or similar institutions. The DOS has extended the J-1 Program participation duration for these participants from 3 to 5 years.

Professors and Research Scholars may also participate in occasional lectures and short-term consultations off-site if authorized to do so by the J-1 Program sponsor, and if such lectures and consultations are only incidental to the primary activities.

For more information or immigration processing assistance, contact:

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**IMMIGRATION
SUPPORT
SERVICES**

1300 Bent Creek Boulevard
Mechanicsburg, PA 17050
800-437-7313 within the U.S.
717-506-5203 International
717-506-5208 Fax
info@ImmigrationSupport.com
www.ImmigrationSupport.com

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