



Bard College

# GUIDE FOR SPONSORING INTERNATIONAL SCHOLAR APPOINTMENTS

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## **WELCOMING INTERNATIONAL SCHOLARS**

Non-immigrants visiting the US to work, teach, perform research, or other educational pursuits will need to be sponsored by a department at the College. Bard's Office of International Scholar & Student Services (OISSS) is available to assist with inquiries involving the invitation of foreign visitors to participate in Bard programming.

This guide includes a list of non-immigrant classifications that will allow foreign visitors to legally accept monetary compensation for activities and services offered in the US. The guide has been developed to help in hiring decisions. Communication between the OISSS office, the hiring department, and the visiting scholar provides the foundation to identify the most appropriate non-immigrant classification for the intentions of the visitor and the purpose of their visit.

The OISSS office is charged with the management and implementation of the J-1 exchange visitor program. The duties include document review, DS-2019 development, and SEVIS database management for all J-1 visitors.

H-1B, Lawful Permanent Resident ('green card'), O-1, E-3 petitions are filed with the consultation of an immigration attorney. Bard coordinates the processing of these visas with Andrew Fair Law Firm, 299 Broadway Suite 1320, New York, NY 10007.

The OISSS office is available for consultation regarding TN, B1, VWP visas, however these applications are self-sponsored and are the responsibility of the foreign visitor.

## **SHORT TERM APPOINTMENT OPTIONS:**

Short-term appointments should be considered when the assignment is temporary, will last six months or less, and there is no desire of the employer or employee to pursue Lawful Permanent Residency/LPR ("Green Card"). The individual should plan to return home upon completion of their sponsored program.

### **J-1 Short-Term Scholar**

- **Definition:** The J1 Cultural Exchange Program was created to "increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges."
- **Purpose:** The purpose of a J-1 Scholar visit is to lecture, observe, consult, train, and demonstrate a special skill. The current occupation typically held in their home country is academic: Professor/Researcher, Post-doc, Pre-doc.
- **Length of Stay:** 1 day-6 months
- **Dependents:** [J-2's](#) are eligible to work and study while in the US.
- **Challenges:**
  - Dual-intention (temporary appointment while pursuing permanent immigration status) is not allowed.
  - [Two-Year Home Residency Rule \(212 e\)](#) may apply.
- **Advantages:** Individuals can return an unlimited amount of times in the Short-term Scholar category.
- **Application Processing Time:** 15-30 business days
- **Fees:**
  - \$220 [SEVIS Fee](#)
  - \$160 [DS-160 Visa Application Fee](#)

## **LONG TERM APPOINTMENT OPTIONS:**

Long term appointments would be any position that is intended to last beyond 6 months.

### **J-1 [Research](#) or [Professor](#) Category:**

- **Definition:** The J1 Cultural Exchange Program was created to "increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges."
- **J-1 Professor:**
  - J-1 Professor primarily teaches, lectures, observes, or consults at a postsecondary accredited educational institution. A professor may also conduct research, unless disallowed by the sponsor.

- **J-1 Researcher:**
  - J-1 researcher primarily conducts research, observes, or consults in connection with a research project. The research scholar may also teach or lecture, unless disallowed by the sponsor.
- **Length of Stay:** 3 weeks-5 years
- **Challenges:**
  - Visitor is subject to the 12 month and/or 24 month bar.
  - [Two-Year Home Residency Rule \(212 e\)](#) may apply.
  - Dual-intention (temporary appointment while pursuing permanent immigration status) not allowed.
  - Tenure Track appointments are excluded from this visa category.
- **Advantages:** Low Cost/Less Intensive application process
- **Dependents:** J-2's are eligible to work and study while in the US.
- **Application Processing Time:** 15-30 business days
- **Fees:**
  - \$220 [SEVIS Fee](#)
  - \$160 [DS-160 Visa Application Fee](#)

### [H-1 B Specialty](#)

- **Definition:** The H1-B visa specialty occupation is a classification for individuals who are identified as highly skilled workers with a minimum of a bachelor's degree or higher in the relevant field of study and occupation. H1-B status allows dual intent, and is appropriate for both tenure and non-tenure track appointments.
- **Length of Stay:** Up to 3 years, with ability for an additional 3 year extension. Additional extensions beyond 6 years are allowed in limited case, including when the permanent residency petition ('green card') has been pending for over 365 days and when the H1-B employee has spent time outside of the US during the period of H1-B employment.
- **Restrictions:**
  - Previous J-1 status may subject individuals to the [Two-Year Home Residency requirement \(212e\)](#). Those subject to this requirement would either need to return home and complete the two year home residency or successfully apply for a waiver recommendation from the Department of State.
  - A minimum salary is required. The minimum acceptable salary will be determined by the Department of Labor through the prevailing wage determination:
    - The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment. Effective January 4, 2010, employers can obtain this wage rate by submitting a request to the [National Prevailing Wage Center](#) (NPWC), or by accessing other legitimate sources of information such as the [Online Wage Library](#), available for use in some programs.

- International employees sponsored by Bard on an H1-B visa can only be employed and paid by Bard College. Researchers with overseas or outside funding must visit on a J-1 Research category.
- Transfer of H1-B and concurrent H1-B's are possible, however a separate H1-B application must be filed before employment with any new or second employer can begin. The portability rules would apply, allowing the H1-B employee to begin work with the new or second employer once the receipt notice for the second position is obtained from USCIS.
- **Processing Time:**
  - Prevailing Wage Determination (PWD): Up to 100 days to obtain
  - Labor Certification Application (LCA): 7 days for LCA; Labor Certification: 5 -10 months after the prevailing wage is obtained
  - USCIS: 5-6 months Regular Processing; 15 days for Premium Processing
- **Fees:**
  - \$3020.00 for regular processing
  - Premium processing is an additional \$1410.00 and will only be funded by the hiring department if it is required to fulfill a departmental hiring need.
    - When application is employer initiated, Bard College will cover regular processing fees. In cases where the salary is \$2000 or more than the base Prevailing Wage determination, \$1000 of the attorney fees can be reimbursed by the employee.
- **Dependents:** H4 dependents can study while in the US. In certain cases, H-4 spouses can seek employment authorization in the US.
- **Advantages:** H1-B is a dual intent visa option and a pathway for permanent residency ("green card"). H1B holders can study/complete degree while in H1B status.
- **Termination of H1-B:** If the employment is terminated for reasons other than voluntary resignation, the employer is liable for the reasonable cost of return transportation to the last place of residency prior to entry into the US.

### O-1 Aliens of Extraordinary Ability

- **Definition:** The O-1 category is available to foreign nationals who have extraordinary ability in science, art, education, business, or athletics demonstrated by sustained national or international acclaim whose achievements have been recognized in the field through extensive documentation. Extraordinary ability is a high level of expertise and indicates that the person is one of a small percentage who has risen to the very top of their field. The foreign national must seek to enter the United States to continue work in an area in which they are extraordinary.
- **Length of Stay:** Up to three years, with unlimited extensions in increments of one year.
- **Processing Time:** Up to 6 months for regular processing, up to 3 months for premium processing. USCIS will respond to petition within 15 days with premium processing. If the O1 Visa is self-sponsored the foreign national will need to independently hire an immigration attorney for assistance with filing their petition.

- Fees:
  - Original Petitions:
    - \$4520.00 for regular processing
    - Additional \$1410.00 for premium processing
  - Transfer Petitions:
    - \$3020.00 for regular processing
    - Additional \$1410.00 for premium processing

In most cases, the fees associated with these petitions will be the responsibility of the employee.

- **Dependents:** O-3 can study while in the US. Employment is not permitted.
- **Advantages:** O-1 has a dual intent and can be a pathway for Permanent Residency. Individuals in O-1 status can accept Tenure and/or Tenure tracked positions.
- **Termination:** If employment is terminated for reasons other than voluntary resignation, the employer is liable for the reasonable cost of return transportation to the last place of residency prior to entry into the US.

### TN Visa

- **Definition:** This category was created under NAFTA to facilitate entry for qualified citizens of Canada and Mexico to engage in professional business activities, teaching, and research on a temporary basis. The position being supported must be on the [NAFTA DESIGNATED PROFESSIONS LIST](#)
- **Length of Stay:** May be granted in three year increments with unlimited extensions.
- **Dependents:** Can study while in the U.S. Employment is not permitted.
- **Processing Time:** 1 day to 4 weeks
  - For Canadian Citizens, TN visa is not always required (DS 160 application and consular interview). Canadian citizens must show letter of job offer and credentials at the port of entry and can be granted TN status at time of entry. For Canadian and Mexican Citizens requiring the visa, completing the DS -160 application and a visa interview is required.
- **Fees:** For Canadian Citizens not requiring visa, \$56.00 paid to the Customs and Border Protection Officer at the port of entry. For Canadian and Mexican Citizens requiring a visa, \$160 [visa application fee](#)
- **Advantages:** Low Cost/Quick Processing/Self Supported with invitation letter from College
- **Restrictions:** Permanent Residents of Canada & Mexico are not eligible to apply for TN status. Must be a citizen.

## F1 OPT

- **Definition:** F-1 student will apply for work authorization, through their sponsoring institution of higher education, for optional practical training directly related to the student's major area of study.
- **Length of Stay:** All F-1 students are eligible for an initial 12 months of OPT. Students in the DOL specified fields of STEM (Science, Technology, Engineering, Math) can qualify for an additional 24 months of OPT (24 month extension approved in 2016).
- **Processing Time:** up to 6 months
- **Fees:** It is the students responsibility to pursue OPT approval with the institution that holds their F-1 visa.
- **Dependents:** F2's cannot be employed or pursue studies while in the US.
- **Advantages:** F1 OPT participants can apply for a change of status and remain in the US for additional work opportunities or employment extensions.

## Categories for International Non-employment Business Visits

### B-1

- **Definition:** The B-1 is used to enter the US to engage in such business activities as negotiating contract for an overseas employer, consulting with business associates, attending professional conferences, giving lectures or conducting independent research. The B-1 is available to foreign visitors to enter the US to participate in these types of activities at the College.
- **Length of Stay:** The maximum duration of stay is 6 months.
  - *If honorarium will be received, activities can last no longer than **nine days at any single institution or organization**; payment must be offered by an institution or organization described in INA 212(q); honorarium is for services conducted for the benefit of the institution or entity; and visa **applicant will not have accepted such payment or expenses from more than five institutions or organizations over the last six months.***
- **Restrictions:** Traveler is prohibited from pursuing studies, employment, paid/professional performances in before a paying audience, research conducted for the benefit of the institution, permanent residence.
- **Processing:** This visa is self-sponsored and can be applied for by completing the following steps:
  1. Complete the [online visa application, Form DS 160](#)
  2. Print the application form confirmation page to bring to your interview.
- **Advantages:** Self-sponsored, low cost
- **Disadvantages:** Dual Intent not permitted. Employment compensation prohibited unless criteria for honorarium are met.

## VISA WAIVER PROGRAM:

- **Definition:** (VWP) allows citizens of participating countries to travel to the United States without a visa for the following business purposes:
  - consult with business associates
  - attend a scientific, educational, professional, or business convention or conference
  - attend short-term training (you may not be paid by any source in the United States with the exception of expenses incidental to your stay)
  - negotiate a contract
- **Length of Stay:** Maximum of 90 days
- **Restrictions:** Honorariums are not permitted on the Visa Waiver. Travelers must be from a participating country to be eligible to use the VWP. Traveler is prohibited from pursuing studies, employment, paid/professional performances before a paying audience, research conducted for the benefit of the institution, permanent residence.
- **Processing Time:** VWP visits are self-sponsored and can be approved through completing an ESTA application online.
- **Advantages:** Self-sponsored, low cost, immediate approval notice.
- **Disadvantages:** Dual intent not permitted. Employment of any kind prohibited. Only available to participating countries.

If you are eligible to travel on the VWP, but prefer to have a visa in your passport, you may still apply for a visitor (B) visa.

## **INTERNATIONAL EMPLOYMENT AND SOCIAL SECURITY CARDS**

A Social Security Number (SSN) is a tax identification number that tracks employee salary in a payroll system. Social Security Numbers are issued by the Internal Revenue Service (IRS), which is the tax authority of the United States. Employers use the SSN to maintain payroll records and as a form of identification for the I-9 Employment Eligibility Form. Most employers require a social security number from their employees. Foreign Nationals are required to have a specific immigration status to be eligible to apply for a Social Security Number. Individuals offered a position of employment at the College, are required to have an immigration status that allows for employment and will need to apply for a SSN (if they do not already have one). Social Security Numbers do not expire, therefore, if they've previously had one they cannot apply for a new number. They will either need to provide the original card or, if they no longer have it or the type of card they need has changed, [apply for a replacement SSN card](#). If their card states "NOT VALID FOR EMPLOYMENT" they will need to apply for a replacement card that states "VALID FOR WORK ONLY WITH DHS AUHTORIZATION". More information about the types of SSN cards can be found on the Social Security Administration [website](#).

## **UNAUTHORIZED EMPLOYMENT RISKS**

Unauthorized employment is a violation of the terms of nonimmigrant status. International employees who violate this status put themselves at risk now and in the future. Employment outside the terms of their nonimmigrant status can result in a termination of F-1 or J-1 status, the potential for being barred from being in the United States for a period of time, or future problems in applying for permanent residency. The College is also placed at risk for federal fines or sanctions. Individuals with questions about their employment authorization should contact Tamara Stafford, [tstaffor@bard.edu](mailto:tstaffor@bard.edu) or 845.758.7851, at the Office of International Student & Scholar Services (OISSS).

Federal Law (The Immigration Reform and Control Act of 1986 (IRCA) and College policy do not allow work to be performed without a valid I-9 on file. All employees, regardless of nationality, must complete a [Form I-9](#) (Employment Eligibility Verification). In the case of international hires the I-9 allows the department to verify that the person has the proper work authorization as defined by Homeland Securities List of Acceptable Documents. Form I-9 is a three-part document. The law requires that the employee complete Section 1 on or before the close of business of the first day of work. The employer must complete Section 2 by no later than the close of business on the employee's third day of work or by the close of business on the first day of work if the employment is for less than three days. The employer must certify that the employee's original documents of identity and employment eligibility appear to be genuine and belong to the employee. Section 3 is completed by the employer when it is necessary to update or re-verify an employee's work authorization. Questions about the completion of I-9s can be directed to Betty Rodriguez, [brodrigu@bard.edu](mailto:brodrigu@bard.edu), Bard College Human Resources Department.