

## COMPARING NON-IMMIGRANT VISA STATUSES J-1, H-1B, AND TN EMPLOYMENT OPTIONS



This document will highlight the characteristics of the J-1, H-1B, and TN visa categories, as well as the advantages and disadvantages of each, and specifically as they relate to hiring foreign nationals into paid positions at UT Health San Antonio. This is not an exhaustive list and OIS will review each situation carefully depending on the foreign national's biographic information, immigration status history, anticipated start date, and the needs of the hiring unit to make a final determination.

### J-1 EXCHANGE VISITOR VISA

**Purpose of the J-1 visa:** Education and cultural exchange

**J-1 Exchange Visitor Research Scholar/Professor** status is appropriate for positions requiring the minimum of a Bachelor's degree or higher. At UT Health San Antonio, these employee positions include, but are not limited to:

- Postdoctoral Research Fellows
- Visiting Scientists, Visiting Students, or Student Associates
- Physicians doing research who are **not** involved in any direct patient care or patient contact other than approved incidental patient contact

J-1 status can only be used for positions with a limited duration, and cannot be used for staff positions or faculty members in the professor series.

#### J-1 Advantages –

- No filing fees required by hiring unit;
- Relatively quick turnaround and request does not have to go to USCIS;
- OIS issues the DS-2019 and thus has more control over the process;
- No labor condition application (LCA) or prevailing wage determination are required;
- Funding can come from multiple sources and can change over time;
- Research scholars and professors may request authorization to participate in occasional lectures and short-term consultations outside of UT Health San Antonio, if these opportunities are incidental to the primary program activities and directly related to the program objectives.
- J-2 spouses can apply for work authorization;
- Exchange visitor may work at various worksites, but all locations must be disclosed to OIS;
- Individual has an additional 5 years of work authorization that does not subtract from the six-year limit in H-1B status, and thus providing the individual more time to apply for permanent resident status, if applicable;

#### J-1 Disadvantages –

- Scholar must pay I-901 SEVIS fee (\$220) before applying for visa;
- Non-immigrant intent: Individual must demonstrate to U.S. consulate a residence abroad with no intent to immigrate to the U.S.;
- Two-year home residency requirement (212e) applies if receiving government funding, if field of research is on home country's skills list, or sponsored by ECFMG;
- J-1 status forbids patient contact or care, other than approved incidental patient contact.
- Maximum duration of 5 years in research scholar/professor category;

## H-1B VISA

### Purpose of the H-1B visa: Employment

H-1B Specialty Occupation status is appropriate for professional positions that require a minimum of a Bachelor's degree or higher in a specific field. At UT Health San Antonio, these employee positions include, but are not limited to:

- Assistant, Associate, or Professors
- Professor, Associate, Assistant, or Instructor/Clinical
- Professor, Associate, Assistant, or Instructor/Research
- Lecturers/Instructors
- Research Scientists
- Postdoctoral Research Fellows
- Other Professional Exempt Staff where a specific degree is minimum requirement

H-1B status can only be used for individuals who are "employed" by the University and cannot receive funding from another source. We do not sponsor GME Residents and Fellows for H-1B status (only in rare circumstances).

### H-1B Advantages -

- Dual intent visa: No requirement of foreign national to maintain a residence abroad; Can maintain non-immigrant status even after steps taken toward permanent residency;
- H-1B visas can be easier to obtain because non-immigrant intent not an issue.
- Employee can start working at UT Health San Antonio if already in H-1B status at another employer, and as soon as petition filed;
- Six year maximum in H-1B status, given in three year max increments;
- Possibilities for extension beyond the six years in H-1B status if first step toward permanent residency filed before the end of the 5<sup>th</sup> year in H-1B status;
- Patient contact and care allowed if physician has appropriate documentation and licensure;
- H-1B petition can be expedited using premium processing (if available at time of filing);
- Employee may work at various locations, but all locations must be disclosed to OIS; USCIS must be notified before work may begin at a new location;

### H-1B Disadvantages -

- Employer required to pay USCIS and OIS filing fees\*;
- H-1B petition requires a multi-step process, which includes OIS filing a labor condition application (LCA) with the Department of Labor before sending the petition to USCIS. USCIS processing times can vary significantly. If premium processing is an option, the petition will be adjudicated by USCIS within 15 calendar days.
- Employer must pay the prevailing wage or higher, as required by the Department of Labor;
- H-4 dependent spouses ineligible to apply for work authorization, except in limited circumstances.
- No honoraria payments or outside consulting allowed - No employment with another employer unless that employer has filed a concurrent H-1B petition;
- If employee is terminated for any reason before end date on the I-797 Approval Notice, employer must pay transportation costs to employee's home country.

OIS Processing Fee \$750.00

I-129 Filing Fee \$460.00

Anti-Fraud Fee \$500.00 (for initial petition only, not for extensions or amendments)

Premium Processing Fee \$2,500.00 (optional but strongly encouraged)

I-539 Filing Fee \$370.00 (for dependents in the US and can be paid by employee)

I-539A Biometric Fee \$85.00 per co-applicant

\*Filing fees subject to change. Please refer to <https://www.uscis.gov/fees> for all up-to-date fees.

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## TN VISA

### Purpose of the TN Visa: Employment

TN Treaty NAFTA, available only for Canadian and Mexican citizens working in one of the professions specified in the NAFTA Treaty. Permanent residents of Canada and Mexico are not able to apply for TN visas to work as NAFTA professionals. At UT Health San Antonio, these employee positions include, but are not limited to:

- Basic scientists
- Postdoctoral Research Fellows
- Medical allied professionals, including physicians doing research who are **not** involved in any direct patient care and **do not** have any form of contact with patients.
- Psychologists

For a full list of NAFTA professions, including minimum educational requirements, please refer to: [NAFTA list](#);

### TN Advantages -

- No employer filing fees;
- No labor condition application (LCA) or prevailing wage determination are required;
- Relatively fast turnaround, and OIS and hiring unit have more control of the process;
- Each TN entry can be valid for up to three years with no limit to the number of extensions;
- Canadian citizens may "extend" or "change" to TN status at border, airport or by filing I-129 petition with USCIS. Mexican citizens may "extend" or "change" to TN status by first obtaining a TN visa stamp and then applying at the border or airport; or by filing I-129 petition with USCIS. Employee presents offer letter, TN-specific cover letter, and academic credentials for entry;
- If employee changes the worksite location, no action is required if providing same services at employer;

### TN Disadvantages -

- Employee must pay nominal \$50 TN fee at the border (Canadians) or before applying for visa (Mexicans).
- For temporary visits only;
- Restricted to the professions listed on the NAFTA TN Professions list;
- Non-immigrant intent: Individual must demonstrate to U.S. consulate or immigration official a residence abroad with no intent to immigrate to the U.S.; Employee should consult with an immigration attorney if filing adjustment of status application for permanent residency while in TN status;
- TD dependent spouses ineligible to apply for work authorization;