

The *East Baton Rouge (EBR) School Board Immigration Policy Statement* applies to foreign nationals who are (or will be) EBR School Board employees and who are subject to U.S. immigration laws. The EBR School Board intends to comply with applicable immigration laws. This Policy Statement was prepared to provide guidance on how EBR School Board will handle certain employment-based immigration scenarios. This Policy Statement is subject to modification, with or without notice and will be construed in accordance with currently applicable immigration law and interpretive guidance.

- A. Foreign National: any individual who is not a United States Citizen, Lawful Permanent Resident (“green card” holder), Asylee or Refugee.
- B. Nonimmigrant Visa or Status: a temporary immigration status, which may allow employment authorization as permitted by law. This includes H-1B, TN, and O-1 visas, among others. F-1 and J-1 visa holders are sometimes granted employment authorization.
- C. H-1B Visa or Status: a category of nonimmigrant status for individuals who qualify for “specialty occupation” positions. Typically issued in three-year increments for a total of six years and can be renewed under certain circumstances. The visa is dual- intent meaning that this status allows the foreign national holding the visa to pursue permanent resident status.
- D. J-1 Visa or Status: a category of nonimmigrant status for individuals approved to participate in exchange visitor programs in the United States.
- E. F-1 Visa or Status: a category of nonimmigrant status for full-time students enrolled at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program.
- F. Permanent Residence or “green card” a/k/a Immigrant Status: a status that confers the right to live and work in the United States for any employer indefinitely. Persons may be sponsored to become permanent residents through a close family member, through EBR SCHOOLS, by other employers, or in rare cases, by themselves.
- G. Labor Certification: an administrative process required for many employment-

based permanent residence categories. Labor Certification requires evidence of the unavailability of qualified U.S. workers. Some employees may be exempt from the labor certification process due to their exceptional scholarly record.

- H. Specialty Occupation: an occupation that requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

discretion to make any employment decision about whether to hire the individuals, including the decision to hire them and then terminate employment once they are no longer authorized to work (the EBR School Board would have no duty to sponsor the individual when the time comes).

The EBR School Board will endeavor to complete a visa assessment to determine a foreign national candidate's immigration options and to secure employment authorization where needed as soon as it is practical to do. The EBR School Board may require a candidate to enter into a conditional acceptance of employment contingent on securing the immigration status that the EBR School Board determines is appropriate for EBR School Board' Sponsorship.

The EBR School Board will pay most nonimmigrant visa sponsorship costs for

- Form I-94 indicating J-1 nonimmigrant status; and
- Form DS-2019 with the responsible officer's endorsement. The J-1 exchange visitor cannot work after the program end date on this form.

J-1 students may present the documents above if they also have a letter from the responsible officer authorizing employment.

To satisfy List B and C documents requirements, the J-1 student could present a state driver's license (List B) and a Form I-94 in combination with Form DS-2019 and a letter from a responsible officer (List C #7). The J-1 student may present any combination of acceptable documents. The Forms DS-2019 for J-1 exchange visitors who transfer to a different program or change their sponsors must indicate the new program or sponsor.

B. Waiver of the Two-Year Home Country Physical Presence Requirement

Some J-1 exchange visitors are subject to a two-year home country physical presence requirement. The physical presence policy requires the foreign national to return to their country of origin for at least two years after his or her exchange visitor program. The EBR School Board will make diligent effort to consult with counsel to determine whether a foreign national is subject to this requirement before deciding whether to sponsor that individual for a nonimmigrant or immigrant visa.

If the foreign national is subject to this requirement, but the parties prefer to avoid the physical presence policy, a waiver must be obtained. The Department of Homeland Security must approve the waiver before a candidate can change status in the United States or receive a visa in certain categories. The EBR School Board is not responsible for the preparation, filing or payment of J-1 waiver applications on behalf of the employee, but it may cover these costs and engage external immigration counsel for this service at its discretion.

C. Nonimmigrant Visa Sponsorship

If the EBR School Board is inclined to sponsor a J-1 visa holder for an H-1B visa or other nonimmigrant visa, the EBR School Board will endeavor to consult with immigration counsel to discuss visa options, J-1 waiver requirements, timelines and costs. the EBR School Board should consult with counsel at least one year before the end of the J-1 visa holder's program end date.

designated school official (DSO)(List A). This is acceptable for 180 days from the expiration date on the EAD, after which the EBR School Board must reverify the student's work authorization.

If the student presents an expired EAD and an endorsed Form I-20 as described above, the EBR School Board should enter the following information under List A in Section 2 of Form I-9:

- EAD as the document title;
- DHS as the issuing authority;
- The EAD document number;
- The date the EAD expired in the expiration date space, and
- "180-day Ext."

C. Nonimmigrant Visa Sponsorship

If EBR SCHOOLS is inclined to file a cap-exempt¹ H-1B petition (or other nonimmigrant visa petition) on behalf of an F-1 visa holder, it should make that determination at least six months before the expiration date of the employee's OPT EAD, unless that student is eligible for a STEM extension. If the student is eligible for a STEM extension, EBR SCHOOLS should make the nonimmigrant visa sponsorship determination at least six months before the expiration of the student's STEM extension EAD.

- The petition will be sent to the U.S. consulate nearest the prospective employee's foreign residence.
- The prospective employee can then apply at the U.S. consulate for a nonimmigrant visa.
- If the consulate issues a visa, the prospective employee may travel to the United States to apply for admission.
- If admitted, the employee may begin working for the EBR School Board and must complete Form I-9.

Under the American Competitiveness Act in the Twenty-First Century (AC-21), an employee currently in H-1B status may begin working for a new employer as soon as the new employer files a Form I-129 petition for the employee, if certain requirements are met. If the employee is not currently in H-1B status, he or she cannot change employers or begin working until USCIS approves the Form I-129 petition. The EBR School Board must complete a new Form I-9 for this newly hired employee. The H-1B employee may present the Form I-94 indicating H-1B nonimmigrant status issued for employment with the previous employer along with his or her foreign passport as a List A document. The EBR School Board should write "AC-21" and the date he or she submitted the Form I-129 petition to USCIS in the margin of Form I-9 next to Section 2. To show that the EBR School Board filed a petition on the employee's behalf, it is suggested that the EBR School Board retain the following documents with the employee's existing Form I-9:

- A copy of the new Form I-129;
- Proof of payment for filing a new Form I-129;
- Evidence that you mailed the new Form I-129 to USCIS; and
- the EBR School Board must reverify the employee's employment authorization in Section 3 once USCIS makes a decision on the petition.

B. H-1B Term Limits and Policy for Green Card Sponsorship

In general, foreign workers may be granted up to a total of 6 years of H-1B status, although this period can be extended under limited circumstances. For example, additional extensions are available if a labor certification has been filed with the U.S. Department of Labor on behalf of the employee before the end of the employee's 5th year in H-1B status, and the green card process is still pending at the time that the extension petition is filed. Accordingly, to ensure timely filing of the labor certification application, the EBR School Board should try to make a determination regarding immigrant visa or green card sponsorship for H-1B employees at least 24 months before the end of his or her 5th year in H-1B status. The EBR School Board is allowed to make exceptions to this aspirational temporal guideline as a matter of discretion. For example, when an employee changes employers and joins the EBR School System less than 18 q a a

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E. H-1B Employee Termination

The EBR School Board is under a legal obligation to notify USCIS upon termination of employment of a H-1B visa holder. As a result, the EBR School Board may also withdraw any related Immigrant Visa applications. Where an employee is terminatef13 (l)-209 (o)2 (o)-3(f13 .q0 3 (9m 612 792 reW(y)15(h)-3 (e)-3 ()]

Foreign national employees will be responsible for all additional costs outside of mandatory fees and the attorney and government filing fees related to the I-140 and I-485 as explained above. These additional costs may include costs such as the cost of obtaining a required medical examination and any travel that may be required to obtain any Immigrant Visa where not associated with travel for the benefit of the EBR