



## Dartmouth College • International Office

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### **U.S. Visa and Immigration Options for International Lecturers, Researchers or Professors**

Dartmouth College’s International population has grown by more than 300% between 1985 and 2005, from 242 individuals to more than 1,000. More and more College departments are filling positions ranging from researchers and visiting professors to full tenured positions with highly qualified internationals. The International Office advises departments on the issues relating to the inviting and hiring of internationals, and processes the paperwork for these new hires. This document covers possible non-immigrant visa and immigration options open to internationals hired by Dartmouth College.

#### **B-1 Occasional Lecturers**

Dartmouth College may bring international business visitors on B-1 visas to campus for the purpose of one-time, short-term lectures, seminars, medical clerkships or consultations, and may reimburse them for travel or living expenses in the form of honoraria, provided that the visitor:

- is not receiving a salary or wage from Dartmouth College
- will not be present at Dartmouth College for more than nine days, and
- has not accepted such payments from more than five other institutions/organizations within the last six months

(Reference: U.S. DOJ memo for Regional Directors from Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations, 30 November 1999)

If the individual is a non-U.S. citizen and does not have a U.S. Social Security Number, or an IRS Individual Taxpayer Identification Number (ITIN), the College is required by IRS regulations to withhold a flat 30% tax rate from any payment. If the individual applies for an ITIN, or has a social security number, they may complete an IRS form 8233, and have a lesser amount withheld – or possibly no amount withheld, if their citizenship qualifies them for a U.S. tax treaty article. Please contact the International Office and Accounts Payable to verify that an individual is eligible to receive an honorarium.

This status is also appropriate for international medical students coming to participate in medical clerkships, or visiting physicians or nurses who will be observing, with no clinical patient care or responsibilities.

#### **J-1 Researchers and Faculty**

The J-1 Exchange Visitor Program is overseen by the US State Department. The J-1 program is not appropriate for tenure-track, full-tenured, or permanent positions. Dartmouth College is authorized by the U.S. State Department to issue DS-2019 forms to foreign researchers and faculty who have been hired by the College. This form allows the international to apply for a J-1 exchange visa at the U.S. embassy in his/her home country. The period of employment may range from a few days, to three years in length. The individuals may show funding from Dartmouth College, their home government or institution, the U.S. government, private or public grants or foundations, personal funds, or any combination of the preceding. The International Office must be notified of any change in position or funding, as listed on the DS-2019 form, in advance. While employment is limited to the sponsoring institution and stated position, the International Office may authorize occasional off-campus lectures and seminars in advance, if they are directly related to the individual’s exchange program at Dartmouth College. There may be restrictions placed on the individual’s employment with Dartmouth College depending on the J-1 category used, and whether the individual has had any previous periods of J-1 employment in the U.S. Short-term scholars (six

months or less) may not extend their program. There is a one-year bar to re-entry in the Professor and Research Scholar categories for anyone who has just completed a J-1 program, of greater than six months' duration. Individuals accepting a J-1 program may be subject to a two-year home residency requirement at the end of their program, depending on their home country's skills list and/or their source of funding. This only comes into effect if the individual wishes to apply for an H or L visa, or for Permanent Residency in the U.S. J-1 exchange visitors have a 30-day grace period when their program ends before they must depart the U.S., or change to a different visa status.

### **H-1B Temporary Workers**

The H-1B visa is used to bring skilled workers in a specialty field to the U.S. for temporary employment. The H-1B visa may be used initially for a tenure-track position, but is not appropriate for tenured or permanent positions. It does allow "dual-intent", however, so an H-1B employee is free to explore permanent residency options. Dartmouth College may act as an H-1B petitioner to Citizenship & Immigration Services (CIS) on behalf of an international employee, researcher or professor who has been offered a position at the College. The international must hold at least a Bachelor's degree in the field in which he or she will be working, and the position description must require at least a Bachelor's degree.

The H petition may be filed for an initial period of up to three years, with an additional three-year extension available. The process is quite lengthy, involving a New Hampshire state certification of the wage offered, a Labor Condition Application to the Department of Labor, and, finally, an I-129 petition to CIS. From initial contact with the hiring department to receipt of the CIS Notice of Approval, it usually takes from 4 to 6 months. If the individual being hired has been in J-1 status at any time in the past, he or she may be required to return to their home country for two years before being allowed to apply for an H-1B visa.

The temporary worker may not begin work until the Approval Notice has been received, unless he or she currently holds H-1B status in the U.S. at another institution or organization. He or she may enter the country no more than ten days prior to beginning employment. The H-1B authorization is specific to the stated position, duties, employment dates and location filed with the Department of Labor. If any of these will change over the course of the employment, the International Office must be notified well in advance of the change, so that an amended petition can be filed. **The College must continue to pay at least the stated full-time wage until the amended petition is filed.** If the employment is terminated early at the behest of the department, the department is then liable for travel and relocation expenses of the individual to his or her home country, if the employee chooses to return home. The International Office must send a notification of employment termination to CIS immediately, and withdraw the Department of Labour approval, in order for the termination to be valid. At the end of the authorized employment period the individual must depart the U.S., or change to a different visa status.

### **TN Status**

This non-immigrant status is the result of the Trade NAFTA agreement, and allows certain Canadian and Mexican citizens to enter the U.S. for employment purposes. The employment must be temporary in nature, and must be found on a list of authorized employment fields published by the State Department (Professors and Researchers are found on this list). The status must be renewed annually, and due to the temporary nature of the employment, is not suitable for a tenure or tenure track position.

### **O-1 Status**

This is also a non-immigrant visa status, and is available to individuals who are considered to be in the top few percent of all individuals in their field. This is a difficult standard to meet, and the International Office will review the applicant's CV to determine if he or she might qualify for an O-1. The O-1 is valid for up to three years initially, but then may be renewed only one year at a time.

### **Permanent Resident Applicants**

All full tenure or tenure track hires are eligible for permanent residency sponsorship by the College, and should set up a meeting with their International Advisor to discuss their options. For all research or staff positions, the Department Chair or Dean must sanction all College-sponsored permanent residency requests as evidenced by their signature on a Sponsorship Request Form (available from the International Office). The signed form should be forwarded to the International Office. The Department then will be referred to one of three immigration law firms authorized by the College General Counsel to file government petitions on behalf of the College (please see list below). The attorney hired by the international will submit the assembled petition to the International Office for appropriate signatures, and then file it with the Immigration Service. Please note that agreement by the College to sponsor an international for permanent residency in no way obligates the College to pay any legal fees associated with the petition. These fees are the responsibility of the international unless otherwise negotiated with the Department or Dean's Office. **It is also important to note that departments and internationals are not authorized to hire outside law firms to file government petitions.** All College-sponsored petitions must be assembled by one of the four authorized law firms listed in the Policy statement, and signed by the International Office.

There are several different kinds of employment-based petitions for which the employee may qualify. These categories include:

#### **I) Employment First Preference (EB-1) (no labor certification required)**

Priority Workers: All Priority Workers must be the beneficiaries of an approved Form I- 140, Immigrant Petition for Foreign Worker, filed with BCIS. Within this preference there are three sub-groups:

- 1) Persons of extraordinary ability in the sciences, arts, education, business, or athletics. Applicants in this category must have extensive documentation showing sustained national or international acclaim and recognition in the field of expertise. Such applicants do not have to have a specific job offer so long as they are entering the U.S. to continue work in the field in which they have extraordinary ability. Such applicants can file their own petition with the BCIS, rather than through an employer;
- 2) Outstanding professors and researchers with at least three years experience in teaching or research, who are recognized internationally. No labor certification is required for this classification, but the prospective employer must provide a job offer and file a petition with the BCIS; and
- 3) Certain executives and managers who have been employed in at least one of the three preceding years by the overseas affiliate, parent, subsidiary, or branch of the U.S. employer. The applicant must be coming to work in a managerial or executive capacity. No labor certification is required for this classification, but the prospective employer must provide a job offer and file a petition with the BCIS.

#### **II) Employment Second Preference (EB-2)**

Professionals Holding Advanced Degrees, or Persons of Exceptional Ability in the Arts, Sciences, or Business: All Second Preference applicants must have a labor certification approved by the DOL, or Schedule A designation, or establish that they qualify for one of the shortage occupations in the Labor Market Information Pilot Program. A job offer is required and the U.S. employer must file a petition on behalf of the applicant. Aliens may apply for exemption from the job offer and labor certification if the exemption would be in the national interest, in which case the alien may file the petition, Form I-140, along with evidence of the national interest. There are two subgroups within this category:

- 1) Professionals holding an advanced degree (beyond a baccalaureate degree), or a baccalaureate degree and at least five years progressive experience in the profession; and
- 2) Persons with exceptional ability in the arts, sciences, or business. Exceptional ability means having a degree of expertise significantly above that ordinarily encountered within the field.

#### **III) Employment Third Preference (EB-3)**

Skilled Workers, Professionals Holding Baccalaureate Degrees and Other Workers: All Third Preference applicants require an approved I-140 petition filed by the prospective employer. All such workers require a labor certification, or Schedule A designation, or evidence that they qualify for one of the shortage occupations in the Labor Market Information Pilot Program. There are three subgroups within this category:

- 1) Skilled workers are persons capable of performing a job requiring at least two years of training or experience;
- 2) Professionals with baccalaureate degrees are members of a profession holding at least a university bachelor's degree; and
- 3) Other workers are those persons capable of filling positions requiring less than two years of training or experience.

**IV) Employment Fourth Preference (EB-4)**

Special Immigrants: There are six subgroups:

- 1) Religious workers
- 2) Certain overseas employees of the U.S. Government
- 3) Former employees of the Panama Canal Company
- 4) Retired employees of international organizations
- 5) Certain dependents of international organization employees
- 6) Certain members of the U.S. Armed Forces.

**V) Employment Fifth Preference (EB-5)**

Employment Creation Investors: To qualify, an alien must invest between U.S. \$500,000 and \$1,000,000, in a commercial enterprise in the United States which creates at least 10 new full-time jobs for U.S. citizens, permanent resident aliens, or other lawful immigrants, not including the investor and his or her family.

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For further information on specific application procedures, please contact the International Office. If sponsorship is approved, individuals and departments must select one of the following law firms, each of which is authorized to file BCIS petitions on behalf of the College.

Curran and Berger Assoc.  
Dan Berger, Esq.  
53 Gothic St.  
Northampton, MA 01060  
[dhb@jcvisa.com](mailto:dhb@jcvisa.com)  
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