2.6.3 EMPLOYMENT OF IMMIGRANTS AND NON-IMMIGRANTS

A. PURPOSE
Louisiana State University Health Sciences Center in Shreveport may employ immigrant and nonimmigrant aliens, provided that such employment conforms to the provisions of the Immigration & Nationality Act and other Federal and State laws, to applicable Federal regulations and to the standards established by the University. Any decision reached by the University will not be affected by the race, color, age, religion, sex, handicap, national origin or veteran status of the prospective employee.

B. BACKGROUND
The legal term "alien" encompasses any person who is not a citizen or national of the United States. Generally, in order to work in the United States, aliens must be either (1) lawfully admitted for permanent residence (immigrants, "green card" holders or lawful permanent residents) or (2) authorized by the Immigration & Naturalization Service (INS) to accept employment or (3) classified in a nonimmigrant classification which allows employment with LSUHSC as an element of the nonimmigrant classification.

A nonimmigrant is an alien who has been granted temporary admission to the United States for specific purposes and is required to maintain status and depart from the United States when the purpose of the temporary stay has been accomplished. A nonimmigrant should always have an arrival/departure record (INS form 1-94) (and perhaps other documents depending upon his or her status) bearing the period of authorized stay and an alphabetical symbol designating the nonimmigrant classification. The nonimmigrant classifications most commonly found at LSUHSC-S include:

(1) Academic Students (F-1) and Their Families (F-2)

An F-1 student is a nonimmigrant who is pursuing a full course of study towards a specific educational or professional objective, at an academic institution in the U.S. that has been designated by the INS to offer courses of study to such students.

F-1 students may be legally employed under the following circumstances:

a. On campus employment 8 C.F.R. 214.2(9)(1);

b. Employment authorized because of severe economic hardship 8 C.F.R. 214.2(9)(ii);

c. Special student relief program, which is based on the on-campus and economic hardship employment categories;
d. Certain employment sponsored by international organizations 8 C.F.R. 2.14.2 (f) (9)(iii);

e. Practical Training (curricular and optional practical training 8 C.F.R. 214.2 (f) (10).

Any employment opportunities and further information about the above five criteria for employment for F-1 students should be discussed with the designated official in the Office of Legal Affairs. F-2 dependents may not accept employment or engage in business under any circumstances.

(2) Temporary Workers in Specialty Occupations (H-1B) and their Families (HH4)

There are five parties involved in the H-1B process:

a. The U.S. Department of Labor (DOL): Determines prevailing wages for occupations in the geographic area of employment and approves the LCA for submittal to the INS.

b. The U.S. Immigration and Naturalization Service (INS): Accepts the employer’s petition (Form 1-129) with DOL certified LCA attached.

c. The U.S. Employer: Submits forms to DOL and INS and employs the H-1B worker pursuant to terms of the approved LCA and 1-129 after both are approved. At LSUHSC the Office of Legal Affairs is responsible for filing and maintaining all paperwork for the H-1B status.

d. The Alien Employee: Is responsible for maintaining status by complying with the terms of employment.

e. The U.S. Department of State: Responsible for issuing H-1B visas through the appropriate U.S. embassies and consulates.

The H-1B category may be approved for an initial period of three years with extension in up to three-year increments thereafter. Cumulative maximum duration is six years with the exception that people with an 1-140 (immigrant petition) employment based immigration applications or adjustment of status applications if a year or more has passed since the labor certification was filed or the 1-140 was filed. H-1B visas may be extended pursuant to this section in one-year increments until the final decision comes in on the green card petition.

H-4 visa status prohibits employment authorization. H-4 dependents may study in the U.S., full or part time, but the duration of their stay is dependent on the H-1B’s period of stay. When H-4 children turn 21, they are no longer considered children and thus are no longer eligible for H-4 status.

(3) Exchange Visitors (J-1) and their Families (J-2)

The J Exchange visitor category was developed to implement the Mutual Educational
and Cultural Exchange Act of 1961. The overall purpose of that Act, and the objective of the Exchange Visitor category, is to increase mutual understanding between the people of the U.S. and people of other countries by means of educational and cultural exchanges. This program is managed by the Department of State.

Categories of Exchange Visitors frequently used by LSUHSC are:

a. College and University Students: Must be admitted to a degree program at an accredited educational institution for a full course of study.

b. Short-Term Scholars: Individuals who are defined as professors or research scholars who come to the U.S. on a short term visit for the purpose of lecturing, observing, consulting, training, or demonstrating special skills at research institutions or similar types of institutions. It is an ideal category for programs and visits of short-term duration lasting anywhere from one day to a maximum of six months.

c. Research Scholars: Individuals who primarily conduct research, observe, or consult in connections with a research project at research institutions. The research scholar may also teach or lecture.

d. Alien Physicians Engaged in Medical Training: Physicians who are coming to participate in a clinical exchange program, involving patient contact and care within a program of graduate medical education or training conducted by an accredited U.S. school of medicine, must be sponsored by the Educational Commission for Foreign Medical Graduates (ECFMG).

Dependents of J-1's are classified as J-2's and may accept employment. They are required to apply to the INS for an Employment authorization Document (EAD) in order to accept any type of employment in the U.S. A J-2 dependent's status terminates in the J.S. when that of the J-1 participant terminate.

(4) Canadian Employees (TN) and their Families (TO)

The North American Free Trade Agreement (NAFTA) was developed to facilitate the entry of Canadian and Mexican citizens to the U.S. to engage in professional business activities on a temporary basis. Only occupations specified in the NAFTA treaty can serve as the basis of TN employment. Aliens with TN status can be admitted for a period of up to one year and there is no cumulative total limit on the time an alien can be in the TN status. Status can be renewed each year indefinitely, provided that the stay remains temporary in nature.

Dependents of TN's are classified as TO and are not authorized to work in the U.S. but may attend school, either part time or full time.

(5) Nonimmigrant Workers of Extraordinary Ability (0-1) and their Families (003)

The 0-1 category is reserved for an alien of extraordinary ability in the sciences, arts, education, business or athletics. These persons have achieved and sustained national or international acclaim for extraordinary ability in their field. LSUHSC
requires an alien who is seeking this particular category to obtain a private attorney (at no expense to the University) who will provide the documentation and forms that will be sent to the INS for approval. The 0-1 has an initial period of stay up to three years with one-year extensions thereafter with no maximum cumulative duration limit.

Dependents of 0-1’s are called 0-3’s and may not accept employment in the U.S.

C. EMPLOYMENT PROCEDURES

The Chancellor’s Designee for Immigration Affairs in the Legal Affairs office is the only LSUHSC-S official who is authorized to sign applications to the INS, the U.S. Department of Labor, the U.S. State Department and other forms and documents relating to the classification, certification, status or entry of alien employees.

Any questions or problems regarding immigration matters should be referred to the Office of Legal Affairs. Aliens are entitled to retain private immigration lawyers but all forms and applications are subject to review by the Office of Legal Affairs.

It is the responsibility of all alien employees and the departments in which they are employed to keep the Office of Legal Affairs advised of changes in status, the receipt of new 1-94 cards or other matters or events which affect the alien's authorized stay, status, or employment.

As with all employees, aliens and citizens alike, employment cannot be initiated until the 1-9 form, verifying employment authorization and documentation, has been completed by both the worker and the University. As to nonimmigrant alien employees, the Office of Legal Affairs shall be responsible for 1-9 completion.

Aliens may, with or without the use of private immigration lawyers and at no expense to the institution, seek alien labor certification and lawful permanent residence in the United States based upon job offers from LSUHSC and the approval granted to proceed, provided that the alien's department chooses to support the application and provided that the interests of the University as determined by the Office of Legal Affairs are not adversely affected. All representations or assertions made by or on behalf of departments or individual aliens shall be truthful and consistent with applicable laws and procedures.

D. CHANGES IN LAWS AND REGULATIONS

Because immigration laws and regulations are subject to frequent and complex changes, it is advisable to check with the Office of Legal Affairs before undertaking discussions or making commitments with regard to new employment or extensions/changes of status for existing employees. Obtaining photocopies of all available immigration documents, including forms 1-94, IAP-66, 1-20AB, 1-797, passports (particularly those pages showing visa stamps from U.S. Consular Offices) and other applicable immigration documents, together with academic credentials, including equivalency evaluations of foreign degrees, enables the Office of Legal Affairs to provide maximum assistance from the start.