

OUR PRACTICE

Academic

A wide array of temporary and permanent avenues for U.S. immigration exists for academic professionals, some specifically targeting them. Academic institutions have particular problems with tax withholding and benefits rules, particularly because of tricky exemptions for people working in F-1 and J-1 status.

Temporary Options

The classifications most commonly used by academic professionals include the following:

- **B-1** for short term academic visits of scholars and researchers, including "a short course of study" incidental to the visit. Normally this must be without U.S. remuneration. However, a visitor in the B classification may accept an honorarium payment and associated incidental expenses from up to 6 entities in a six month period, as long as the paying entity is an institution of higher education or related or affiliated nonprofit entity, from a nonprofit research organization, or from a government research organization that is the beneficiary of the "usual academic activity" (lasting not longer than 90 days at any single institution).
- **F-1 and J-1** to engage in a course of study.
- **H-1B** for work in any position requiring at least a bachelor's degree in a specific field, which is normally the case for a teacher, professor, or researcher. Most positions in non-profit institutions in higher education and research are exempt from the annual cap on the number of approvals, and a broader group of employers including even elementary schools are exempt from the \$1,000 extra petition filing fee.
- **TN** for Canadian or Mexican citizens coming to work as college, seminary, or university teachers with a baccalaureate or licenciatura degree, researchers in a host of scientific and medical subjects, and arguably teachers at any level where the subject to be taught fits the list of professionals in NAFTA.
- **O-1** for aliens with extraordinary ability in their field.
- **J-1** exchange categories under arrangements approved by the U.S. Department of State specifically for the following:
 - Professors and Research Scholars– research, teaching, lecturing, observing, or consulting at research in non-tenure track positions in institutions, corporate research facilities, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions in the U.S. in programs designed to stimulate international collaborative teaching and research efforts. Most programs are up to three years, but extensions are possible for over 6 years total.
 - Teachers– full-time teaching in a primary or secondary accredited educational institution for up to three years.
 - Short Term Scholars– educators, scientists, research fellows, writers, museum administrators, librarians, and similar persons of recognized expertise for lecturing, observing, consulting, training, or demonstrating special skills at research institutions, museums, libraries, post-secondary accredited educational institutions, or similar types of institutions for up to six months.
 - Specialist– experts at scientific institutions, government agencies, museums, corporations, libraries, and similar types of institutions, for up to one year.
- **L-1** for transferees within a multinational organization having commonality in ownership.

Permanent Options

Common options for permanent residence for academic professionals include the following, some of which are at least in part unique to them:

- "Extraordinary ability" aliens with sustained acclaim in their field can avoid labor certification, avoid backlogs, and even file their own petitions
- **Outstanding professors and researchers** with substantial accomplishments or recognition and at least three years of experience in teaching or research in the academic area may be sponsored (a) for a tenured or tenure-track teaching position or a permanent research position in an institution of higher learning or (b) for a permanent research position by a private employer having at least three accomplished full-time researchers
- **Second employment based preference** for aliens with advanced degrees or exceptional ability, using the labor certification process or a showing that the employment is in the national interest.
- **Third employment based preference** for skilled workers or professionals, based on a labor certification. Note that there is a special, advantageous procedure applicable to college and university teachers, under which the alien may receive permanent residence even when there are available minimally qualified U.S. workers, as long as the alien is the *most qualified* as demonstrated through a competitive search process, as opposed to the normal standard requiring that the alien be the *only minimally* qualified candidate.

Academic professionals may nevertheless seek permanent residence through any other means available, including other [employment-based categories](#), [lottery](#), [family sponsorship](#), [asylum](#), etc.

How We Can Help

We can help an academic institution plan the types of international professionals it will bring in and the types of immigration status to offer them. We help schools develop and obtain government permission for foreign student and exchange visitor programs. We help obtain and maintain the appropriate types of short and long term immigration status for academic professionals and their family members, using the categories discussed above, and more. For institutions who allow professionals to obtain their own immigration counsel, we represent those institutions in coordinating efforts with such counsel to maintain overall compliance with law and institutional policies and goals. We help F-1 and J-1 employers comply with complex tax withholding rules that can be the subject of costly IRS audits.