

## EAST BATON ROUGE PARISH SCHOOL BOARD IMMIGRATION POLICY STATEMENT

### I, Introduction

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.

### II. Definitions

- 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.

### III. Contingent Employment

Offers of employment to a Foreign National are contingent upon an individual's ability to secure and maintain the legal right to work for the EBR School Board, including obtaining work authorization. All employees are required to meet all I-9 requirements within three (3) days of beginning work for the EBR School Board.

### IV. Recruiting and Hiring: Anti-discrimination

Schools (within the EBR School System) seeking to hire Foreign Nationals, for employment in the U.S. under the terms of a temporary, nonimmigrant visa, should comply with the anti-discrimination provisions of the Immigration and Nationality Act (INA) (see 8 U.S.C. §1324(b)). The INA prohibits four types of conduct:

1. Citizenship or immigration status discrimination;
2. National origin discrimination;
3. Unfair documentary practices during employment eligibility verification (Form I-9) process;
4. Retaliation for filing a charge or asserting rights under the anti-discrimination provisions.

A decision to decline hiring an applicant who needs visa sponsorship based on budgetary limits is not discriminatory *per se*. Such decisions must be made without the intent to discriminate against the applicant based on national origin, or to retaliate against a person for activity protected under federal law. The EBR School Board is not legally obligated to sponsor or hire people who will need visa sponsorship.

The EBR School Board may make employment-based immigration decisions that are more favorable to certain individuals than others. For example, some individuals may not need sponsorship at the time of hire because their student status or another path authorizes them to work; however, they will need sponsorship sometime in the future. In this case, The EBR School Board has

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).

## **V. Non-Immigrant Sponsorship: Assessment of Visa Options**

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.

## **VI. Non-Immigrant Sponsorship: Payment of Fees**

The EBR School Board will pay most nonimmigrant visa sponsorship costs for immigration petitions that are required to allow foreign national employees to obtain valid work authorization to begin employment. In general, The EBR School Board will not pay for dependent family members (spouse and children under the age of 21). However, foreign national employee and dependent family members may engage with the EBR School Board's designated counsel to process such applications, ensuring the most efficient and (often) the most cost- effective immigration processing.

The need for Premium Processing (expedited government processing) filings will be considered by the EBR School Board on a case-by-case basis. If Premium Processing is necessary, the EBR School Board will pay for such Premium Processing fees. If the EBR School Board decides that Premium Processing is not needed, the foreign national employee may still request such a filing and pay the fee when doing so is legally permissible.

## **VII. Non-Immigrant Employment: J-1 Visas**

J-1 exchange visitors may work in the United States if the work is part of their approved program or if they receive permission to work from the official program sponsor.

### **A. I-9 Instructions**

J-1 exchange visitors receive several documents related to their program. For Form I- 9 purposes, the following documents are considered a List A document, showing both identity and employment authorization:

- An unexpired foreign passport;

- 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.

## VIII. Non-Immigrant Employment: F-1 OPT

Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 student's major area of study. Eligible students can apply to receive up to 12 months of OPT employment authorization before completing their academic studies (pre-completion) and/or after completing their academic studies (post-completion). However, all periods of pre-completion OPT will be deducted from the available period of post-completion OPT.

### A. OPT – I-9 Instructions

Foreign students in F-1 nonimmigrant status participating in OPT should obtain an EAD from USCIS to show they are authorized to work. The student may not begin employment until the date indicated on the EAD. While still in school, a student authorized for OPT may work:

- Full-time during the student's annual vacation and at other times when school is not in session.

After finishing a course of study, USCIS may authorize an F-1 student up to 12 months of OPT. F-1 students must enter the "Card Expires" date from their EAD in the Authorized to Work Until field in Section 1. The EAD establishes their identity and employment authorization for Form I-9 purposes. EBR SCHOOLS should enter the card information including the number and expiration date under List A in Section 2 of Form I-9. When the EAD expires, EBR SCHOOLS must reverify the F-1 student's employment authorization in Section 3. The employee may choose to present any List A or List C document that shows that he or she continues to be authorized to work in the U.S.

### B. STEM Extension – I-9 Instructions

F-1 students who received a bachelor's, master's, or doctoral degree in science, technology, engineering or mathematics from an accredited Student and Exchange Visitor Program-certified school may apply for an extension of their OPT while in a period of post-completion OPT. STEM OPT students must work for the EBR School Board while the EBR School Board is enrolled and in good standing with E-Verify, the electronic employment eligibility verification program administered by USCIS. EADs issued to F-1 STEM OPT students usually state "STU: STEM OPT ONLY."

The following documents establish the student's identity and employment authorization for Form I-9 purposes:

- Unexpired EAD (List A); or
- Expired EAD presented with Form I-20 endorsed by the student's

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-exempt<sup>1</sup> 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.

## **IX. Non-Immigrant Employment: H-1B Visas**

This nonimmigrant classification applies to people who wish to perform services in a specialty occupation. The job must require a bachelor's or higher degree, or its equivalent, in the occupational field to perform the duties. Generally, the employee must have a U.S. bachelor's or higher degree required by the specialty occupation from an accredited college or university or a foreign degree that is the equivalent to a U.S. bachelor's or higher degree required by the specialty occupation.

### A. I-9 Instructions

If a potential employee is in the United States, he or she can begin working once USCIS approves the Form I-129 petition and the EBR School Board completes Form I-9 provided the petition contained a change of status or extension of stay request that was also approved.

If a potential employee is outside of the United States or ineligible to change his/her status while in the United States:

- 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 5<sup>th</sup> 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 5<sup>th</sup> 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 months before the end of the employee's 5<sup>th</sup> year in H-

1B status, the EBR School Board may make a determination about green card sponsorship at the time of hiring that employee or thereafter.

### C. Travel by H-1B Employee

If, at any time, a foreign worker covered by an H-1B visa travels outside of the United States, he or she should notify the EBR School Board and obtain the original I-797 Approval Notice from the EBR School Board prior to departure to facilitate re-entry to the United States.

### D. Cap-Subject H-1B Petitions

Congress set a congressionally mandated cap of 65,000 H-1B visas, with an additional 20,000 set aside for those with a U.S. Master's degree or higher. USCIS conducts a lottery each year and randomly selects 85,000 registrations to be sent to processing. This lottery takes place annually in March, and cap-subject H-1B petitions must be filed between April and June.

However, some H-1B petitions can be filed at any time without going through the annual H-1B lottery registration. For example, a foreign national who is employed or has received an offer of employment at an institution of higher education or a related or affiliated nonprofit entity, a nonprofit research organization, or a governmental research organization, is not subject to the H-1B cap.

As long as the EBR School Board remains a tax-exempt political subdivision of the State of Louisiana and maintains an appropriate affiliation with an institution of higher education, the EBR School Board can file cap-exempt H-1B petitions at any time during the year without being subject to the annual cap. The EBR School Board should carefully maintain and monitor the expiration date of its affiliations with institutions of higher education. The EBR School Board should attempt to renew its affiliation(s) at least six months prior to the expiration date listed on each affiliation agreement when doing so would effectuate bona fide purposes.

If the EBR School Board loses its qualifying affiliation with an institution of higher education, it should notify immigration counsel immediately to evaluate the immigration consequences for its H-1B employees. For example, the EBR School Board may need to register certain foreign national employees for a "cap-subject" H-1B visa in the annual lottery in March. The EBR School Board should notify immigration counsel of its intent to register a foreign national in the annual lottery no later than the end of January each year.

### 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 terminated by the EBR School Board before H-1B visa status expiration, the EBR School Board will pay for the return airfare of the employee as required by law. Where the employee decides to voluntarily terminate employment, the EBR School Board is under no obligation to pay for such return transportation.

### **X. Immigrant Sponsorship: Requirements and Process**

Immigrant visa sponsorship requires a good faith showing to the government that employee is needed and will be employed in a particular position into the future. The EBR School Board will consider the following factors prior to authorization of any Immigrant Visa process being started:

- Future skills needed of the function and/or department;
- Current and expected labor market conditions;
- Employee's current knowledge, skills and abilities;
- Employee's performance against objectives and values;
- Level of position within the EBR School System;
- Expected duration of employment in Employee's current non-immigrant status.

The EBR School Board will determine which immigrant visa category will be sponsored based on consultation with external immigration counsel as needed. The Immigration Visa process may be stopped due to a change in employment needs, employee performance, or other criteria as determined by the EBR School Board.

### **XI. Immigrant Sponsorship: Fees**

The EBR School Board will cover most Immigrant Visa sponsorship costs for sponsorship of a foreign national employee. In general, no fees are covered for dependent family members (spouse and children under the age of 21). However, foreign national employees and dependent family members may work with the EBR School Board immigration counsel to process such applications, ensuring the most efficient and (often) the most cost-effective immigration processing.

In addition to mandatory fees associated with labor certification to be paid by the EBR School Board, the I-140 Petition for Alien Worker as well as the I-485 Adjustment of Status application fees will also be paid by the EBR School Board.

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 School Board.

The need for Premium Processing (expedited government processing) of the I-140 Petition will be considered by the EBR School Board on a case- by-case basis to determine if there is a need or not. If a need exists, the EBR School Board will cover such Premium Processing fees. If the EBR School Board decides that Premium Processing is not supported by a need, the foreign national employee may still request such a filing and pay such fee where legally permitted.

## **XII. Immigration Counsel Information**

The EBR School Board works with external immigration counsel to secure the efficient and effective implementation of our immigration program

This policy is subject to periodic review and revision.

<sup>1</sup> See *also* Section IX(d) regarding “cap-subject” H-1B petitions and the timeline that applies to that type of petition.

New policy: September 28, 2023

Ref: Board minutes, 9-28-23.