Immigration Rights and Responsibilities of Scholars in H-1B Status

Purpose
The University of Georgia (UGA) has petitioned U.S. Citizenship and Immigration Services (USCIS) on your behalf and secured approval to employ you in H-1B status. There are a number of rules and procedures governing H-1B status that you must follow, and others that must be followed by the University of Georgia. It is important for you to understand these in order to maintain lawful status and to remain lawfully employed by this institution.

This pamphlet has been prepared by UGA’s International Student, Scholar & Immigration Services’ office to summarize some of the important rights and responsibilities you have as an employee in H-1B status in relation to regulations of U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of Labor (DOL). It also identifies some of the situations for which you should seek assistance from the International Student, Scholar & Immigration Services (ISSIS). It is, of course, impossible to cover all U.S. laws and procedures that might affect you in every situation. At your request, the ISSIS staff will be pleased to offer additional information, as well as counseling and assistance, on all federal regulations and procedures related to your lawful status. ISSIS will inform you of substantial changes via electronic communication or on the ISSIS website at www.issis.uga.edu. We strongly advise you to contact the scholar advising team at the ISSIS (issis@uga.edu) any time you have a question or if you intend to travel and reenter the United States.

The H-1B Classification
The United States government defines the H-1B as a classification granted for an individual to work in a “specialty occupation.” A specialty occupation is described as a position that requires application of a highly specialized body of knowledge in a field that normally requires a bachelor’s degree (or the equivalent) or higher in the specialty as a minimum requirement for entry into the occupation in the United States. To qualify for the H-1B visa classification, the employee must possess at least a bachelor’s degree, or the equivalent, in the specialty field.

The I-797 Approval Notice
ISSIS has provided you with the original Approval Notice (Form I-797) issued by USCIS. This document contains your name as the beneficiary, shows The Trustees of the University of Georgia (UGA) as the employer, and also indicates the period of time during which you may be employed by UGA in H-1B status. If the petition was for an extension of your current H-1B status or changed your status to H-1B, the I-797 also includes a tear-off I-94 card. As instructed on the form, please remove the I-94 card and place it in your passport, preferably by stapling it on top of your current I-94 card if you have one.

The I-797 Approval Notice is a very important document. You must present it to a consular officer if you apply for an H-1B visa, and to a port of entry official if you enter (or re-enter) the U.S. in H-1B status. Along with your I-94 card and passport, it is primary proof that you hold lawful status in this country. Please take good care of this document and return it to our office after your travels. You will check it out from our office each time you travel or need to apply for a driver’s license. It is the employer’s proof of being able to legally employ you, and so we keep it in your file in our offices unless you need it for travel purposes.

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Employment Start Date: If you are currently outside the U.S., you may enter the country up to ten (10) days prior to the start date indicated on the I-797. You must begin employment at UGA no later than 30 days after the I-797 start date, or 30 days after the date you enter the U.S., whichever is later. Likewise, if you are currently in the U.S., you must begin work at UGA no later than 30 days after the I-797 start date. Please consult with ISSIS if you will not be able to adhere to this timeline.

Employment End Date: You may be employed by UGA up to, and including, the end date of the I-797 Approval Notice. However, you may not stay in the U.S. beyond that date. While this seems rather contradictory, there are very serious consequences under U.S. immigration regulations for “overstaying” your period of H-1B authorization. Please plan accordingly. See “Extension of H-1B Status” below to understand how extension applications affect your ability to stay in the U.S.

Your H-1B Status is Employer and Job Specific
The petition submitted on your behalf was specific to the department, position title, duties, salary and location of work to be performed. If you expect any aspect of your job to change, you and/or your hiring department must contact ISSIS before allowing those changes to go into effect. It may be necessary for ISSIS to submit an amended H-1B petition to the USCIS. If so, the changes cannot take place until the amended petition is submitted. While ISSIS expects the UGA hiring department to notify our office of these changes, it is strongly recommended that you also contact ISSIS to be sure the necessary documentation has been submitted.

Working for and/or Receiving Payment from another Employer
Your H-1B status permits you to work ONLY for the University of Georgia and only for the job specified in the original petition. You may not accept employment with any other employer unless that employer submits a “concurrent” H-1B petition. The University of Georgia scholars are often invited to give lectures or seminars at other institutions. You may accept such invitations, but you may not accept compensation (pay) for them. The host may pay your expenses (e.g., transportation to the lecture, hotel, food, etc.), but may not pay you, for example, an honorarium. To accept this type of compensation is a violation of your immigration status.

Time Limitations for H-1B Status
You are permitted to be in the U.S. in H status for a total of six (6) years. Your employer can apply for H status on your behalf for between one and three years at a time. This time limitation includes any time you spent in previous H-1B status. At the end of six years, you must either change to another immigration status or depart the U.S. Once you have remained outside the U.S. for at least one year, an employer may obtain a new H-1B approval for you and you may once again enter the U.S. to begin another six years.

Extension of H-1B Status
The University of Georgia is permitted to apply for H-1B approval for periods of up to three (3) years initially. Any number of extensions can be requested through additional petitions until your total time in H status reaches six (6) years. Where possible, ISSIS will petition for an initial period of three years, then petition for an extension of the remaining three years. However, periods of employment are dictated by the academic appointment. The scope of the position, time spent in H status previously, funding and many other factors are all considered when the UGA hiring department and ISSIS decide together the period requested for H-1B approval. Requests for extensions should be submitted to ISSIS by the scholar and the hiring department at least six months prior to the expiration of the current I-797 Approval Notice.

Dependents
If you have a spouse and/or children under the age of 21, they may obtain H-4 visas and enter the U.S. with you or at a later date, or they may change status to H-4 as you change status to H-1B. Children holding H-4 status must apply to change to another lawful immigration status or depart the U.S. upon reaching their 21st birthday. Dependents in H-4 status may study full- or part-time, but may not be employed in the U.S. in any capacity. There are no exceptions.

Labor Condition Application (“LCA”) Attestations
When processing your H-1B petition, the University of Georgia promised to abide by certain conditions of your employment according to rules of the U.S. Department of Labor by certifying a Labor Condition Application. Among other items, UGA certified that it will pay you the required wage rate, that it will offer you the same working conditions as all other similarly employed workers, that you will receive the same benefits offered to all employees, and that UGA will pay the reasonable cost of transportation to your last place of foreign residence should the institution choose to terminate your employment prior to the end of the period of your authorized employment. A copy of the

Revised 01/18/2012
LCA was included with the copy of the full petition package given to you after the H-1B was approved. If you have any questions regarding the LCA, please contact the ISSIS staff at issis@uga.edu.

**Change of Address**

If you move at any point while residing in the U.S. in H-1B status, you are required by immigration regulations to notify USCIS of your new address within ten (10) days of moving. Notification must be made on Form AR-11 which can be downloaded from the USCIS web site. It is strongly recommended that you use certified mail or a reliable express service (e.g., Fedex, UPS, DHL, etc.) to submit the form. You should also keep a copy of the completed and signed form. Finally, you should also notify ISSIS of your new address by sending an email to issis@uga.edu and notify your department for benefit and payroll purposes as well.

**Traveling Outside the U.S.**

Anytime you depart the U.S. for any country other than Canada or Mexico, it is important that you surrender your I-94 card (the small white card stapled in your passport) to the airline or other port-of-departure official. In order to return to the U.S. in H-1B status, you must have a valid H-1B visa, a passport that is valid for at least six months into the future from the date of your entry, and the I-797 Approval Notice.

When re-entering the U.S., take a close look at the new I-94 card given to you by the port of entry inspector to be certain that you have been admitted for the proper duration of time. If the date written on the I-94 card by the port of entry inspector does not match the end date of your I-797 Approval Notice, please ask the inspector why she/he chose this date and to correct, if possible. If the inspector cannot correct it, or if you notice this discrepancy too late to speak with the inspector, please bring it the attention of ISSIS immediately. It is important to note that the port of entry inspector is permitted to admit you for a period up to ten (10) days beyond the end date of the Approval Notice, though few inspectors choose to grant this extra “grace period.” If you are granted the extra ten days to remain in the U.S., you must still cease employment on the end date of your I-797 Approval Notice.

You are allowed to remain in the U.S. legally, working under the H-1B approved petition only until the end date listed on the I-94 card. Please review this card carefully every time you make a new entry to the U.S. You should always provide ISSIS with a copy of your new I-94 card after every new entry to the U.S.

Please review carefully the H-1B Travel Checklist if you plan to travel outside the U.S. This can be found on our web site at www.issis.uga.edu and you will receive a copy when you check out your original I-797 notice from ISSIS.

**Form I-9: Employment Eligibility Verification**

You are required to complete a Form I-9 in your department within three (3) days of beginning work at UGA and when an extension or amendment of your H-1B status is granted. Form I-9 is a document that every employee, U.S. or foreign, must sign to verify that the employee holds valid employment authorization. I-9s for H-1B employees are completed by appointment only. Please bring your passport and all other immigration-related documents with you.

**Copy Your Documents**

It is strongly recommended that you make clean, clear photocopies of all of your immigration documents including your passport, visa stamps and any I-94 card you obtain. Keep these in a safe place. It is also recommended that you make these part of your permanent records.

**Carrying Your Documents at All Times**

Immigrations laws require you to carry at least your I-94 card with you at all times. If you choose not to carry the I-94 card on a daily basis, it is strongly recommended that you carry a copy of your I-94 card. For further protection, you should also carry copies of your passport, visa and the entire I-797 Approval Notice. When traveling outside the UGA area, you should carry the originals of these documents.

**Leaving UGA to Work for a Different Employer**

If you plan to leave the University of Georgia and begin working for another employer at any point, it is important that you consult with your new employer, the ISSIS and/or an immigration attorney to be sure that you handle the transition in a way that does not violate your immigration status. For example, if the new employer will petition for H-1B approval for the new job, you must continue working at the University of Georgia until the new petition is submitted. Timing and proper procedures are vital and sometimes confusing.

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Taking Classes at the University of Georgia
You are permitted to enroll in individual classes while in H-1B status as long as you continue working in your H-1B position without change.

Legal Representation
All employment-based immigration matters on behalf of the University of Georgia are processed through the ISSIS. Only the ISSIS staff is authorized to sign the legal documents and forms required to sponsor international scholars. The ISSIS processes most nonimmigrant employment-based petitions in-house and the University works with a specific, limited list of immigration attorneys on applications for lawful permanent residence. Therefore, neither employees, nor university departments are authorized to retain outside immigration counsel to represent the international employment needs of the university.

Additional Information
The staff of the ISSIS is pleased to provide you with information, advice, and assistance on any visa or immigration matter that relates to your activities at the University of Georgia. For more information on U.S. Embassies and Consulates and on the visa application process, visit the U.S. Department of State website at www.travel.state.gov or our website www.issis.uga.edu.