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Yinghua Academy Policy 011

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## **YA-011 EMPLOYEE IMMIGRATION POLICY**

- I. PURPOSE:** This policy sets forth the school’s procedures and conditions concerning employment-related immigration matters to assure consistency and provide a clear statement of the school’s position and procedures.
- II. STATEMENT OF POLICY:** Yinghua Academy, at its sole discretion, will assist employees with employment-related immigration by obtaining an appropriate temporary (nonimmigrant) visa status authorizing employment at the school, and, upon satisfaction of those conditions and requirements below, seeking permanent residence (“green card”) status through available legal immigration options.
- III. SCOPE:** This policy applies to all foreign employees working at the school who are subject to U.S. immigration laws, who are not lawful permanent residents (green card holders) or who have not been granted asylum or refugee status in the United States. This policy does not obligate the school to assist employees who have violated U.S. immigration laws and who are the target of Immigration Service enforcement efforts. This school supports and complies with all Federal, State and local laws.
- IV. PROCEDURES FOR TEMPORARY VISAS**

### **a. H-1B TEMPORARY WORKER STATUS**

#### **i. General H-1B Procedures:**

1. The H-1B is available to the school to hire, on a temporary basis, qualified foreign workers. This status currently has an overall limitation of six years in the United States, which includes any prior time the employee has spent working with other U.S. employers under the H-1B visa. The school will determine whether or not to support an H-1B application at its sole discretion based on various factors including but not limited to positive performance review, cost, required wages, and timing. A threshold requirement of the H-1B is that the job at the school must require a minimum of a bachelor’s degree and the candidate must have this degree or the

equivalent. Some foreign degrees are not acceptable, so there may be a preliminary immigration evaluation required prior to extending an offer. The school will be responsible for the costs associated with an H.1B filing.

2. The H.1B will be filed only after an offer of employment has been accepted by the candidate. Due to a shortage under the H.1B cap, this status may be unavailable for the first time beneficiary until

October 1<sup>st</sup> of the next government fiscal year. Those individuals who have temporary work authorization based on their student visa status may begin employment prior to the approval of the H1B visa petition. Those who do not have independent work authorization may not be employed by the school until the petition has been approved, an appropriate change of status or visa has been granted, or in those situations where the filing of an H.1B petition permits the early employment of the foreign worker. There are no exceptions to this rule. The school will determine the appropriate start date based on the specifics of the case. The employee accepting an offer of employment must comply with timely submission of all documents necessary to secure an H.1B. Cap subject H.1B petitions must be filed by April

1<sup>st</sup>. Failure by an employee to timely provide the Administration and its Attorneys with necessary documentation to obtain an H1B prior to April 1<sup>st</sup> may forfeit sponsorship.

3. Processing times for the H.1B vary based on the availability of information needed to prepare the petition, government interruptions and the backlog at the Immigration Office, all of which are generally beyond the control of the school. Therefore, no promises of a start date are to be made to new employees and all offers of employment will be contingent on the receipt of appropriate work authorization from the Immigration Service.
4. The approval of an H-1B petition does not result in the receipt of a visa stamp in the passport if the employee was in the U.S. and his or her temporary status was changed (e.g. from student visa (F-1) to temporary worker (H-1B)). In those cases where the employee will later leave the U.S., the employee will be required to obtain a

visa stamp in his or her passport before returning to the United States. The employee will be expected to arrange the visa issuance independently. An employee may not travel outside the United States when working under a Cap-Gap Optional Practical Training (OPT) extension based upon an H1B filing by the school unless travel has been approved by the school. Travel during Cap-Gap, OPT (without a valid Employment Authorization Document (EAD) and F1 visa stamp) will result in the loss of employment authorization and the inability to return to the United States until October 1st.

5. Whenever an employee travels internationally, the approval notice and a passport valid for at least six months with a valid visa are required to return to the United States. The employee should notify the school and its immigration attorney prior to any international travel.

#### **ii. Extensions of H-1B's:**

1. Any employee on H-1B status must have an extension filed by the school before the current status expires in order to preserve his or her right to work at the school. The employee shall contact the Administration no later than ninety (90) days before expiration of the current H-1B (as noted on the I-94 card/record) to ensure sufficient time remains to process an extension. The school will not assume responsibility for this function since the employee is best situated to control this matter. Any time the employee travels internationally, he or she must double check the date on the I-94 record, present a copy of it to the Administration, and let the school know if there has been any change. The school can determine whether or not to support an H-1B extension at its sole discretion. Generally speaking, the school will support an extension if the employee is performing well on the job and there is further need for the employee's services.
2. Extensions beyond six years: Under certain circumstances employees may be eligible for extensions beyond the six-year limitation for H-1B's. These include: intermittent workers who only work in the U.S. periodically; employees who have departed the U.S. for a period of one year; employees for whom a Labor Certification (L/C) was filed more than 365 days before the end of

the six year period; employees with an approved I-140 petition whose permanent residence application has not yet been adjudicated due to quota backlogs and delays; and those who can “re-capture” time spent abroad during the six years in H-1B status. It is at the sole discretion of the school to determine when to support H-1B extensions beyond the six year limitation. As a general rule, the school will continue to support an employee in H1B status for whom it has sponsored for permanent status.

- iii. **Other nonimmigrant categories:** The school will decide what nonimmigrant visa category is the most appropriate for it to sponsor at its sole discretion. The school will take into consideration the long term immigration goals of the employee, the employee’s dependent needs, and consider other relevant factors including the H-1B cap, duration of work authorization, and costs to the school.
- iv. **Dependents:** Employees in certain nonimmigrant visa categories, such as H-1B, are granted status for their dependents, which includes spouses and children under age twenty-one. The school will prepare appropriate applications for dependents as part of the standard processing, but will require the employee to pay attorneys’ fees and costs associated with any dependent applications. The school can set up a payroll deduction plan for reimbursement to help the employee with the burden of these upfront costs.
- v. **Visa Sponsorship Does Not Create Contractual Obligation:** The decision by the school to sponsor an employee for any specific period available under any of the above nonimmigrant categories does not create a contractual obligation to hire that individual for any specific period. The school may terminate its foreign employees in accordance with its standard employment policies that are applicable to all school employees, as described in the employee handbook.

V. **PROCEDURES FOR PERMANENT RESIDENCE (GREEN CARD):** It is in the school’s best interest to retain employees who have proven themselves to be valuable contributors to the school’s mission and success. The school will carefully evaluate those employees for whom permanent residency is being considered, as the process involves a significant commitment. The school has decided that the decision to pursue permanent residence for an employee will generally be made on a case-by-case basis at the completion of 3 years of employment. Such a decision will be at the school’s sole discretion, based on overall work performance, contributions, loyalty, and other factors

such as likelihood of continued employment with the school, licensure, and overall school planning. The school also recognizes that circumstances may exist where it is in the school's best interest to initiate the permanent residency process sooner, and therefore, the school reserves the right to make individual exceptions for good cause to this 3-year requirement.

**a. LABOR CERTIFICATION**

- i.** In most cases, a school's ability to permanently sponsor an employee requires that it demonstrate to the Department of Labor that there are no qualified U.S. workers available to fill the position. This is commonly called a Labor Certification (L/C). This procedure is time consuming and expensive for the school. The overall processing time for a L/C will take on average eight to twelve months. Each case is unique and there is no way to predict the outcome of the process.
- ii.** After approval by school Administration to initiate the L/C process, the employee will be referred to the school's attorney to begin the process. The employee is expected to assist the attorney to the fullest extent possible, providing requested documentation as needed. Administration will also be involved throughout the process to ensure the school's position is protected and not altered by the employee in his/her belief that adding unjustified requirements to the job improves their chances for success. Since the school must sign these applications under penalty of perjury and because criminal exposure exists for false statements, the Administration is responsible to keep the attorney advised of any relevant issues concerning the L/C and the job requirements.
- iii.** The school has no control over the government agency that which processes the L/C. Additionally, other factors outside the school's control may also interfere with the L/C process, such as the available pool of candidates who respond to the recruitment. The employee is not to be given any promises or assurances that the L/C will be approved. Although the school's attorneys will only proceed with cases that, in their experience, are likely to be successful, there is no guarantee of success and the school cannot be held liable to an employee for a denial of a L/C.
- iv.** The L/C procedure is strictly between the school and the Department of Labor and only if the L/C is approved will the employee derive any benefit. The employee is not to have any involvement in the recruiting process when the position is advertised, and the employee will be isolated from the recruiting process. This is mandated by Federal law and

regulation. Neither the school nor the attorney can control the source of applications and if qualified applicants do exist who are American workers, the L/C will not succeed. At the school's option, the L/C may be withdrawn and reconsidered later.

- b. IMMIGRANT VISA PETITION (I-140):** After a L/C is approved, the school will file an I-140 immigrant visa petition with the Immigration Service on behalf of the employee. The school has six months from the date of L/C certification to file this. The costs of this application will be paid pursuant to the financial agreement signed by the school and the employee.
  
- c. ADJUSTMENT OF STATUS:** After both a L/C and Immigrant Visa have been approved, the employee and his/her family will be eligible to apply for adjustment of status to lawful permanent residence. This process is only available to those whose priority dates are current in the State Department's monthly visa bulletin. Quotas can be backlogged in certain categories, so employees need to be aware that it could take a long time before they are eligible to apply. Employees are also responsible for monitoring their priority dates and advising the school and its attorneys when their priority dates are current. The school will support the employee and his/her family in their adjustment of status applications. The school will engage its attorneys to handle these applications. All legal fees and filing fees will be paid pursuant to the financial agreement signed by the school and the employee. The school can set up a payroll deduction plan for reimbursement to help the employee with the burden of these upfront costs. The employee will provide the Administration and its attorney all necessary family documents and other information necessary to process the adjustment of status promptly and efficiently.