The recruitment and retention of faculty members is a competitive endeavor for academic institutions. Foreign nationals comprise a significant number of those in the talent pool. In some Ph.D. programs at U.S. universities, foreign nationals account for over 60% of the student body. Consequently, universities will gain a competitive edge in the hiring process if they recognize their symbiotic relationship with the foreign national employee and set mutually objective policies. This paper will provide an overview of the pertinent immigration law and discuss the issues surrounding the development and implementation of sound immigration policy for the institution.

IMMIGRATION OVERVIEW

A brief overview of the immigration system is critical to formulating an institutional policy relating to hiring foreign nationals and pursuing immigration benefits for them. Foreign nationals who seek employment in an academic setting are generally well-versed in the overall immigration policy of the United States. Internet research reveals a proliferation of sites outlining the immigration system, the various processes for securing status in the United States and the strategies for maneuvering through the system. Immigration issues are complex and involve several branches of the federal government, located in the United States and abroad, as well as some state government offices.

1 Columbia University’s School of Engineering and Applied Science estimated that the graduate student population of its 2002 class included approximately 60% foreign/international students. www.engineering.columbia.edu/admissions/grad/applying/faq.php
The immigration life of a foreign national employed at a university will involve the Department of Homeland Security (www.dhs.gov) and its three bureaus, United States Citizenship and Immigration Services (“USCIS”) (www.uscis.gov), Immigration and Customs Enforcement (“ICE”) (www.ice.gov), and Customs and Border Protection (“CBP”) (www.customs.ustreas.gov). Additionally, the Department of State which oversees the consulates abroad (www.state.gov) and its Bureau of Educational and Cultural Affairs, which oversees the J-1 exchange program, play a significant role in the immigration process. Not to be left out, the U.S. Department of Labor becomes involved in the action surrounding both the H-1B temporary visa and the permanent residence process (www.dol.gov and www.doleta.gov), as do the State Workforce Agencies for each state.

The websites of the agencies provide a wealth of information, unfortunately conflicting at times. Before discussing policy and programmatic issues, the institution must have a base level of understanding of what the foreign national faces, and consequently, what the institution must do to anchor the prospective employee to the United States.

**Overview of Categories of Status in the United States**

In broad terms, all those in the United States fall into four broad categories: U.S. citizens, permanent residents, nonimmigrants and those illegally here. A non-citizen entering the United States legally will do so either under temporary status or as a permanent resident. 8 USC §1427.

Temporary, or nonimmigrant, status permits an individual to be in the United States for a specific and limited period of time and for limited and defined activities, depending upon the category of entry. Permanent residence permits a law-abiding individual to remain in the United States for a lifetime, with the choice to apply for U.S. citizenship after several years as a lawful permanent resident. 8 USC §1427.

**Temporary, Nonimmigrant Status for Prospective Employees of Academic Institutions**

There are several categories of temporary or nonimmigrant status that permit work in the United States. 8 USC §1101(a)(15). These categories will provide the basis for employing a foreign national on a temporary or defined-duration basis. Those applicable to the university setting will include:
**F-1 Student with Authorized Practical Training**

Upon completion of a degree, F-1 students are entitled in most circumstances to obtain one year of optional practical training employment authorization. 8 CFR §214.2(f). They obtain preliminary authorization from the college or university from which they graduated and then must apply to the USCIS for an Employment Authorization Document (EAD). Additionally, F-1 students may work on campus while still engaged in study and may also obtain permission to work pursuant to a grant of curricular practical training. A prospective employer is not required to file a petition on their behalf. Note, however, that within the year, and frequently within only a few months, an employer who wishes to continue that employment must actually sponsor the individual for another category of work authorized status. It is critical to avoid delaying that decision because it may result in an interruption in the ability to work.

**Spouse of E-1/2 or L-1**

Recently, the spouses of E-1/E-2 and L-1 visa holders have become eligible to receive work authorization. 8 USC §1184(e)(6) and 8 USC §1184(c)(2)(E). Work authorization is granted in two-year increments and is incidental to the continued status of the primary visa holder. A prospective employer is not required to file a petition.

**H-1B Specialty Worker**

This is a category well-known and well-used in the university setting and is the category in which foreign nationals likely will be temporarily employed. 8CFR §214.2(h). Simply stated, the H-1B may be obtained for a position that normally requires at least a bachelor’s degree, the prospective employee must hold at least a bachelor’s degree or its foreign equivalent in the field in question and the employer must be paying a sufficient salary (the higher of actual wage or prevailing wage). An H-1B worker is limited to a six-year maximum stay, but in limited instances, additional time is permitted if the person is substantially involved in the permanent residence process. Pub.L. 106-313, as amended Pub.L. 107-273. Employment authorization is employer specific, geographic specific and position specific and changes generally require the filing of a new petition. An employee is eligible to change employers and move from one H-1B employer to another through “portability” provisions. 8 USC §1184(m). This would permit the employee to begin work as soon as the new employer has filed an H-1B petition and a receipt is
obtained. (Caution: When obtaining the first H-1B, the employee must wait for approval before commencing work.) A prospective employer is required to file a petition.

**J-1 Exchange Visitor with Practical Training Authorization and J-2 Spouse**

J-1 exchange visitor students are generally entitled to 18 months of post completion practical training; i.e., work authorization. The J-2 spouse may obtain work authorization throughout the entire course of J-2 status, including all the years in which the primary J-1 is a student and during the time that the J-1 is working under practical training authorization. 8 CFR §214.2(j)(1)(v). A prospective employer is not required to file a petition.

It is important to recognize that many J-1 visa holders are subject to a two-year foreign residence requirement (“2yfrr”). 8 USC §1182(e). One becomes subject to the 2yfrr if he or she has received either U.S. or home country funding, if the field of endeavor is on the “skills list” (i.e., a shortage list) from the home country or if he or she entered the United States to receive postgraduate medical training (i.e., medical residents). If the 2yfrr exists, the person must return to the country of last residence or nationality before being able to obtain H or L status or permanent residence. Alternatively, it may be possible to obtain a waiver of the 2yfrr. Depending upon the manner in which the individual became subjected to the requirement, the waiver procedure may be relatively simply or very complicated.

**O-1 Extraordinary Ability**

O-1 status is available to foreign nationals shown to have extraordinary ability in the sciences, arts, education, business or athletics. 8 CFR §214.2(o). Those prospective faculty members who possess substantial prior experience may be eligible for this category. Documentation to be submitted will include evidence of receipt of awards or prizes; membership in associations which require outstanding achievements of members; published work about the foreign national; evidence of the individual having acted as the judge of the work of others; evidence of original work of major significance to the field; authorship; evidence that the individual has been employed in a critical or essential capacity for distinguished organizations; evidence of high salary or other comparable evidence. The initial period of validity is 3 years, and thereafter, annual extensions of stay may be sought without limitation. A prospective employer is required to file a petition.
TN Treaty NAFTA

Under the North American Free Trade Agreement (NAFTA), both Canadian and Mexican citizens who seek to enter the United States to teach at a college or university are eligible for TN status. 8 CFR §214.6. This is granted in one-year increments without limitation, as long as the Treaty remains in effect and the category of “Teacher” for colleges, universities and seminaries remains on the list of professions covered by the Treaty. The TN process does not require an employer to file a petition, but does require the employer to provide a detailed letter for a border-adjudicated application for a Canadian or a consular-adjudicated visa application for a Mexican.

The Path to Permanent Residence - Overview

While the foregoing categories of work-authorized nonimmigrant status permit an individual to work in the United States for extensive periods of time, most foreign nationals will seek to anchor themselves and their family in the United States beyond the confines of the permissible time limitations. A number of factors lead to the decision to remain permanently in the United States, including the obvious opportunities that exist here professionally and personally and precarious home-country conditions. Additionally, practical issues fuel the desire to remain: the ability to obtain a mortgage and to make long-term financial investments or commitments, the desire to maintain family unity and the need to secure stability for children who are in school. Children may accompany a principal nonimmigrant visa holder until they reach the age of 21, so the employee with college-age children will be particularly concerned about permanently securing the status of the entire family in the United States sufficiently in advance of the “aging up” of children.

How does one become a permanent resident? There are four possible paths:

1. As a refugee or asylee;
2. Through the Diversity Lottery Program;
3. Under family-based immigration; or
4. Under employment based immigration.
As might be expected, refugee/asylee status will only be granted to nationals of certain countries who can establish a well-founded fear of persecution in that country. 8 CFR Parts 208, 209. The grant of such status is limited and highly dependent upon not only the country of nationality, but also upon the particular circumstances of an individual case, and only upon the proof that can be assembled. It is fair to say that a person from a country considered an ally of the United States will have considerable difficulty in proving the necessary case, but in all cases, the process is long, involved and uncertain.

The second path to permanent residence is through the annual Diversity Lottery program. 8 USC §1153(c). The Diversity Lottery program, which takes place annually, awards permanent residence to 55,000 "winners" of a lottery system. Only nationals of specific countries (ones which have recently experienced low immigration to the United States) may participate. The subject of significant criticism this past year, the system required lottery entrants to submit an electronic application and a digital photograph. Information relating to the lottery can be found at the Department of State’s Bureau of Consular Affairs website at www.travel.state.gov.

The third path to permanent residence is through family-based immigration. 8 USC §1153(a). Much misunderstood as being more generous in its scope than it is, this path may be pursued through a limited circle of relatives in the United States. Those in the United States who may sponsor are: U.S. citizens, who can sponsor their children (minor or adult, unmarried or married), parents, siblings or spouses; and permanent residents who may only sponsor their spouses, minor children and unmarried adult children. Waiting periods can range from a few months to over a decade. Waiting periods for the various categories of family based immigration are found on the Department of State’s Bureau of Consular Affairs website, noted above, under the category of “Visa Bulletin.”

Thus, if one is not from the "right" country for consideration as a refugee/asylee or for consideration under the Diversity Lottery program or if one does not have the "right" relatives in the U.S., the only hope of attaining permanent residence is through employment based immigration. Here it is important for the intending or current employer to understand the critical role that the employment relationship plays in the life of the employee and his extended family. The institution becomes their life-line to the United States.
Not all foreign national employees holding nonimmigrant work status will be able to obtain permanent residence through the employment based system. 8 USC §1153(b). Those aligned to academia have certain advantages in the process, however. Employment based immigration generally requires an employer to prove that there is a shortage of U.S. workers for the job. This process is called Labor Certification. The premise of the system is protection of jobs for the U.S. workforce (which includes U.S. citizens, permanent residents, asylees, refugees and certain others in temporary resident status). 20 CFR §656.20 et seq. For academic positions that involve any teaching, the standard is that the foreign national must be proven to be more qualified than any U.S. worker. For non-academic or non-teaching positions, the foreign national must be the only available worker who is minimally qualified to perform the job. Thus, academic institutions have a competitive hiring advantage over industry because the former may be able to provide a more feasible path to securing permanent residence.

Certain exceptions to the Labor Certification Process exist, many of which are particularly well-suited to the academic milieu. The pertinent exceptions to the Labor Certification Process include: outstanding professors and researchers, those foreign nationals who possess extraordinary ability, those whose work is in the national interest and certain others who have exceptional ability.

**Pertinent Issues Relating to the Labor Certification Process**

The Labor Certification Process for an academic teaching position at a college or university is one that requires detailed proof of the recruitment process. 20 CFR §656.21a. The application is submitted to the Department of Labor with substantiation of the advertisements, applicants and a detailed rationale as to why the foreign national was more qualified than all other candidates. There is a special handling process for this type of application. Among other benefits, recruitment information remains “usable” for eighteen months from the date of selection of a candidate for a job. This means that a college or university may file a Labor Certification Application within eighteen months of the selection of the candidate and may rely upon the pre-existing recruitment documentation. If more than eighteen months has passed, a new recruitment
would be required, resulting in additional advertising cost and staff time devoted to interviewing applicants.

Thus, setting up a policy of retention of documents of all recruitment for faculty members is advisable. Additionally, Department Chairs and those responsible for recruitment should be encouraged to consider the permanent residence process for foreign nationals hired in competitive recruitment within a specified period after selection (for example, within one year). In the event that inadequate records were retained or the eighteen-month time period for the use of documents has expired, a new process of advertising and recruitment is necessary.

Before embarking upon a new recruitment process, consideration should be given to whether the foreign national currently falls within one of the exceptions to the Labor Certification Process, or might reasonably be expected to do so in the future.

**Exceptions to the Labor Certification Process**

As noted above, there are certain circumstances in which the Labor Certification Process may be avoided. The policy behind abandoning the goal of protecting jobs for U.S. workers through the Labor Certification Process is that certain foreign nationals bring such talent to the United States that it will ultimately benefit the economy and other workers to grant permanent status. One need only look at the annual list of Nobel Prize winners to understand that this theoretical construct has paid huge dividends to the United States.

The following are exempt from the process:

a. Foreign nationals with extraordinary ability in their field.

b. Outstanding researchers and professors.

c. Those whose work is in the national interest of the United States.

d. Those with exceptional ability.

**Extraordinary Ability**

A foreign national with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose
achievements have been recognized in the field through extensive documentation is exempt from the Labor Certification Process. Extraordinary ability is defined as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 CFR §204.5 (h)(2). The person must intend to enter the United States to continue work in the area of extraordinary ability and must establish an ability to substantially benefit prospectively the United States. 8 USC §1153(b)(1)(A).

A Labor Certification is not required for this classification, nor is an offer of employment. 8 CFR §204.5(h)(5). Accordingly, a foreign national may self-petition in this category, i.e., submit a petition without the necessity of a sponsoring employer. Nevertheless, the petition must be accompanied by clear evidence that the alien is coming to work in the area in which expertise is claimed. Id. Evidence may include letters from prospective employers, contracts which evidence prearranged commitments or a statement of intent from the alien that explains how he or she plans to continue the work in the field of stated expertise. Id.

The statute requires “extensive documentation” to establish eligibility. 8 USC §1153 (b)(1)(A). The quality of evidence is described in the pertinent regulations to include proof of a one-time achievement (that is, a major, internationally recognized award), or at least three of the following:

a. Lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

b. Membership in associations in the field which require outstanding achievements of their members as judged by recognized national or international experts in their disciplines or fields;

c. Published material about the individual in professional or major trade publications or other major media;

d. Evidence of participation, either individually or on a panel, as a judge of the work of others in the same or an allied field;

e. Evidence of original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

f. Evidence of authorship of scholarly articles in the field, in professional or major trade publications or other major media;
g. Evidence of the display of work in the field at artistic exhibitions or showcases;
h. Evidence of performance in a leading or critical role for organizations or establishments that have a distinguished reputation;
i. Evidence of having commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
j. Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 CFR §204.5(h)(3).

**Outstanding Professors or Researchers**
A foreign national who is recognized internationally as outstanding in a specific academic area and who has at least three years of research or teaching experience in that area may also be exempt from the Labor Certification Process. 8 USC §1153(b)(1)(B). To qualify, one must be entering the United States for a tenured or tenure-track position within a university or institution of higher education to teach or for a comparable position with a university or institution of higher education to conduct research. Alternatively, one may be entering to work in a comparable position with a private employer to conduct research if that employer employs at least three full time researchers and has achieved documented results in the field. Id.

Unlike the priority worker of extraordinary ability, this category requires an offer for employment and, accordingly, a sponsoring employer must submit the petition. 8 CFR §204.5(i)(1). Consequently, this category is of no utility to the individual who seeks to be a self-petitioner.

The documentary evidence needed to support this classification is less onerous than that for an extraordinary ability alien, in that only two, rather than three, of the listed categories of documentation are required. 8 CFR §204.5(i)(3). The type of evidence submitted mirrors that for the person of extraordinary ability with some minor exceptions.

**National Interest Waiver**
Foreign nationals who are members of the professions holding advanced degrees or those of exceptional ability may also seek permanent residence outside the Labor Certification Process if the exemption “would be in the national interest.” 8 CFR §204.5(k)(4)(ii). The term “national interest” is not one that is defined by statute or regulation. The administrative appellate court
within the immigration service attempted to articulate a standard. This non-precedent case, now known as Matter of Mississippi Phosphate, discussed factors that might be considered as supportive of the national interest, such as improving the economy, improving the wages and working conditions of U.S. workers, improving education, improving health care, providing more affordable housing, improving the U.S. environment or the request of a U.S. interested government agency. (AAU, July 21, 1992; EAC 9209150126).

A 1998 precedent decision, In re: New York State Department of Transportation (Int. Dec. 3363, Comm. AAO 1998), eviscerated this standard and substituted a burdensome test for determining national interest waiver eligibility. Scant basis exists in the legislative history to support this standard. Specifically, the beneficiary must be seeking to work in an area of “substantial intrinsic merit,” the prospective employment must have a benefit that “will be national in scope” and it must be prove that the beneficiary will “serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.”

The national interest route has been seriously undermined by this decision, but it may have some utility in certain instances. This is a category which also permits, but does not require, the foreign national to self petition.

**Aliens of Exceptional Ability**

This last category (foreign nationals of “exceptional ability”) under regulations of the Department of Labor is also one that exempts the individual from the Labor Certification Process. 20 CFR §656.22. Although its requirements are very similar to both outstanding researcher/professors and those of extraordinary ability, there are decided differences. The proof required in exceptional ability cases must include documentation from at least two of seven categories:

1. Documentation of receipt of internationally recognized prizes or awards for excellence.
2. Documentation of membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields.
3. Published material in professional publications about the individual.
4. Evidence of participation on a panel, or individually, as a judge of the work of others.
(5) Evidence of original scientific or scholarly research contributions of major significance in the field.
(6) Evidence of authorship of published scientific or scholarly articles in the field in international professional journals or professional journals with an international circulation.
(7) Evidence of the display of work at artistic exhibitions in more than one country. 20 CFR §656.22.

This category also requires a sponsoring employer.

POLICY AND PROGRAM TO MATCH OBJECTIVES

Armed with an understanding of the system facing the foreign national, the institution should formulate a systematic plan for handling permanent residence cases for its employees. This is not a “one-size-fits-all” situation, but one that must be tailored to the individual institution, with some flexibility to accommodate special circumstances. Supporting the pursuit of permanent residence on behalf of an employee is both a recruitment and retention issue. Some prospective employees require a commitment to pursue permanent residence as part of their underlying negotiation in the job offer process. The bargaining power of the individual, market conditions at the time of hire, and the particular needs of the institution at the time of hire will dictate the consideration of this requirement as a condition of acceptance.

Even if it has not been negotiated as a pre-condition to acceptance, employees frequently will seek support (either financial or effort) from the institution after they are hired. The outcome of that request will become a pivotal issue in the employee’s decision to remain in the employ of the institution. Those who seek the benefit and are refused will be eager candidates for jobs at other institutions of higher education or industry.

Who has authority to "make the promise"?
It is wise for an institution to formulate its policy clearly, with pertinent guidelines as to the circumstances under which it will support the permanent residence process for a new hire. Issues to consider: Who will be given authority to agree to pursue permanent residence for a new employee? Will there be a committee process of review before a final decision is made and expressed? Will there be a centralized process housed, for example, with the Provost or within
the Human Resources office? Will individual departments have autonomy on such issues? When will such a decision be made? Will there be a probationary period of employment prior to a promise being extended?

Once a policy is formulated, it is critical that it be clearly expressed to all recruiters, who may inadvertently agree to pursue permanent residence without full knowledge of its implications for the institution. In this regard, it is wise to conduct a training seminar at least once a year aimed at those individuals involved in the hiring process. This should include department chairs, their administrative assistants (who are frequently left to work on the details of cases) and human resources professionals.

**What is the extent of the promise?**

When an employer promises to “support” the permanent residence process, it is not always clear whether that means that it will pursue a course regardless of the feasibility of success, whether it will be responsible for all financial obligations or whether it is agreeing simply to signing forms presented to it by the employee. It is critical that each such promise be clarified so that both employer and employee understand what is meant by “support.” For example, what if counsel concludes that the employee’s case is so weak as to be infeasible? Will the institution spend the money to pursue the matter to an unsuccessful conclusion as a means of satisfying its obligation to pursue the permanent residence process? Does the “support” extend to issues relating to the employee’s spouse and family? What impact will the employee’s lack of cooperation have on the issue? For example, will his or her failure to comply with timely requests for documents change the nature of the institution’s duty to proceed? How will an employee’s demand for immediate or expedited treatment be handled? Will the institution bear all associated costs? Particularly important is clarification of the extent of any promise of support to those who are subject to the two year foreign residence requirement incurred while in J-1 status.

**Who pays for it?**

The permanent residence process and indeed all immigration processing, is an expense both in terms of finances and in terms of work hours devoted to it. It is not unusual for the questions to be asked: "If we pay for it, how long will the person stay?" "What are we getting for our money?" Institutions might conclude that the employee should bear the cost of the process, since
the employee has a significant interest in the outcome of the process and it is not merely in the interests of the institution.

If that rule is adopted, it should not be applied without exception. For the "star" employees or those who have skills which are in high demand, as well as when the institution finds itself in a circumstance of dire need, the general rule should be compromised and the institution should provide full support (financial and effort). For people or positions where high turnover is expected (though not preferred), it is frequently considered more in the interests of the employee to pursue the process and the cost is more easily shifted to the employee.

Even before the permanent residence process, the question of responsibility for payment of attorney’s fees and expenses is likely to arise in the context of the H-1B temporary visa. The Department of Labor prohibits payment of attorney’s fees by the H-1B employee in certain circumstances. 65 FR 80110 et seq., December 20, 2000. The DOL concluded that attorney’s fees are an employer’s business expense. Employers are prohibited from recouping those expenses as a deduction from salary. 20 CFR §655.731(b)(9)(ii)(C). This prohibition against payment of fees by the employee is limited to those circumstances that would result in the employee’s salary falling below the required wage after deducting the fees. Thus, if the employee is paid the exact amount of the required wage and pays the attorney’s fees, then the employer is considered to be underpaying by the amount of those fees. Therefore, before accepting an employee’s offer to bear responsibility for payment of attorney’s fees, an analysis of the wage issue is required.

The reality of the above is that not all faculty/staff are created equal. However, a policy that is not applied uniformly can adversely impact employee morale. Few employees think that they are not "as good as" the next person on their team. Consequently, when one person receives the benefit of full financial support and another does not, negative results may follow. Therefore, to avoid this type of employee relationship problem, institutions should create standards for determining who gets the benefit. Endeavor to set standards which are objective rather than subjective in application (for example: for those at a certain rank, for those in certain disciplines, for those on tenure track, etc.).
If the employer pays for it, how long will they stay?

Money can't buy you love or loyalty. Therefore, after the bill has been paid and permanent residence status has been secured, should the institution anticipate that the employee will stay? Ultimately, the underlying relationship of employee/employer will need to be mutually beneficial. Some employers, mostly in industry, attempt to extract promises that a person will stay for a minimum number of years after permanent residence is secured. Agreements can be structured dictating that the failure to do so will require the employee to reimburse the employer for the expense of securing permanent residence. Such agreements are difficult to enforce. The actual out-of-pocket expense for the permanent residence process is usually not significant enough to warrant a lawsuit against the departing individual.

As an alternative, some employers require the employee to bear the expense at the outset and agree to reimburse the employee if the employee actually stays for a specific number of years. Whether to insist upon such an arrangement relates back to recruitment/retention bargaining power. (If the institution is looking to enter this type of agreement and a competitor is not, a good employment prospect may be lost.) Extracting a promise to remain for a specified period of time has not been a widespread practice in robust economic times or in the hiring of people in disciplines with few qualified workers.

Who gets to select the attorney?

If the institution does not have in-house capability and determines that it will place the financial burden on the employee, it is critical to determine whether the institution will give the employee the full authority to select the attorney. It is important to understand that, depending upon the category utilized, the process “belongs” to the employer. Will the institution permit the attorney selected and paid by the employee to appear on its behalf in processes before the Department of Labor, the Department of Homeland Security, the U.S. Citizenship and Immigration Services offices and the Department of State? An employer should not casually give authority to the attorney selected by the employee without setting up protections for the institution. (Remember that the employee's attorney is representing the best interests of the employee and owes no duty to the employer.)
This problem may be resolved in part by having one approved attorney or a list of attorneys with whom the institution will agree to work. Alternatively, the institution may engage the attorney, directly paying a negotiated fee and then seek reimbursement from the employee. In this circumstance, the employer retains control over counsel.

**Conclusion**

Attracting the best and the brightest employees is part of the critical mission of all colleges and universities. Knowledge of the immigration system and a clear institutional policy regarding involvement in immigration matters are important tools in recruitment and retention.