

Immigration and Foreign National Faculty

Faculty Affairs Workshop for Administrators
May 29, 2008

TWO POINTS BEFORE WE BEGIN:

1. I'm not an immigration attorney and neither are you. NEVER dispense immigration advice without a license.
2. We are under contract with a local law firm, Fragomen, Del Rey, Bernsen & Loewy for immigration services. Expertise is a phone call away. Refer questions to Bill Tallman at (305) 284-3386, or btall@miami.edu.

HOW DO WE FIND OUT A FACULTY MEMBER WILL NEED A VISA?

- We ask. *Carefully.*
- Right: "Are you authorized to work in the U.S.? Will you require assistance in obtaining employment authorization?"
- Wrong: "Are you a U.S. Citizen?" ... "What Nationality are you?" ... "You're not from around here, are you?"

WHEN SHOULD WE FIND OUT IF A FACULTY MEMBER WILL NEED A VISA?

- As soon as possible in the process. A visa can take upwards of five months or more through "regular" processing. If your appointment begins on August 15, you need to start the process in February/March.
- If you do not have that much time, certain visas (H-1B and O-1) can be adjudicated in 15 calendar days for a \$1000 fee. This is known as "Premium Processing."

BEGIN WITH THE END IN MIND

- Faculty who need a visa usually become faculty who need to obtain permanent residency (the “green card”)
- Permanent Residency for teaching faculty can be expedited under Dept of Labor “Special Handling” rules if two conditions are met:
 - A competitive search was conducted, with an ad in a printed publication of national circulation (e.g., *Chronicle of Higher Education*.)
 - The special handling petition must be filed within 18 months of the initial date of offer.

IF WE CAN'T USE SPECIAL HANDLING?

- Qualify for EB-1 status as an Outstanding Professor, or:
- Conduct a post-hoc search under PERM Guidelines:
 - One Sunday Miami Herald ad
 - Print Publication of national circulation
 - Posting on Careerbuilder.com
 - Posting on Employflorida.com
 - Ad in Miami Times
 - Posting on UM website
 - Internal Physical Posting of Job Availability
- Departments must bear all costs of advertising.
- Search must document all applicants and the legitimate, job-related reasons why they were not selected.

THE H-1B VISA

- The most commonly used visa for foreign national faculty members.
- Allows for “dual intent” – that is, faculty can transition from H-1B status to permanent residency.
- Applicants must meet minimum degree requirements and positions must meet minimum prevailing wage as determined by the Department of Labor.
- Department Costs: \$320 Filing Fee; \$500 Anti-Fraud Fee; optional \$1,000 Premium Processing Fee.

THE H-1B VISA CONTINUED...

- Employer-Specific, can only work at UM while on our H-1B. Status is dependent on employment.
- Allows for spouses and dependents to enter the country in H-4, status, but they may not work.
- Can file for up to three years at a time, to a maximum of six years total.
- If a position is terminated prior to the end of the H-1B, the employer is liable for the cost of return transportation to the country of origin.

THE TN VISA

- Status for selected occupations (including faculty) through the NAFTA treaty. Only Mexican and Canadian Nationals are eligible.
- Status is obtained/extended at the port of entry or renewed by mail. Inexpensive, but must be renewed yearly.
- Does not allow for “dual intent” – a faculty member in TN status must transition to another status such as H-1B before petitioning for residency.

THE F-1 OPT VISA

- An extension of F-1 student visa status for one year to obtain “Optional Practical Training” – work experience.
- Candidate applies for OPT through the International Student Office at their institution prior to graduating.
- Does not allow for “dual intent” – a faculty member in OPT status must transition to another status such as H-1B before petitioning for residency.

THE O-1 VISA

- Less frequently used at UM due to cost, and because we are not subject to the H-1B cap.
- Reserved for “outstanding” professionals. Petitions are developed in a similar fashion to tenure cases, with outside letters of reference.

STARTING THE PROCESS

- All Visa Actions now handled by Fragomen, and initiated electronically at <http://miami.fdbl.com>
- Contact Bill Tallman for a login and password to the site.

INFORMATION NEEDED TO COMPLETE THE ONLINE CASE INITIATION

- Basic information about the position (use Ariba document for reference)
- Electronic Copy (pdf) of the Offer Letter
- Scan of Position Advertisement (if applicable)
- Departmental FedEx, DHL, UPS Account Number (will be charged for the overnight filing of the case, and for shipping of approval documents)
- Actual Wage Form and Memorandum

Actual Wage Form
PLEASE ATTACH TO NONIMMIGRANT VISA/CASE INITIATION FORM WHERE INDICATED

Please complete this form for all others in the Department/Division/Center with the same classification as the H-1B employee.

Name	UM ID#	Title	Date Started At University	Date Started In New Position	Contract Length 9/12 month	FTE	Annual Salary	Highest Degree	Year Of Degree	Institution Of Highest Degree

The salary of the prospective/current H-1B employee has been determined by comparing the education, experience, specialized knowledge and other relevant factors with those for all other persons in the same job classification within the Department/Division/Center.

Department/Division/Center Chair/Director _____ Printed Name and Title
Date _____

Actual Wage Form

UNIVERSITY OF MIAMI
ACTUAL WAGE MEMORANDUM
PLEASE COMPLETE, AS APPROPRIATE, AND ATTACH TO NONIMMIGRANT VISA/CASE INITIATION FORM WHERE INDICATED

To: Public Access File
From: Chair/Director, Hiring Department/Division/Center
Re: Actual Wage Memorandum for [Name of Prospective/Current Employee]
Date: [MM/DD/YYYY]

As indicated by the attached Actual Wage Form, in addition to _____ [Name of Prospective/Current Employee] there are three other Assistant Professors in the _____ [Name of Department/Division/Center]. Two of those employees earn a higher salary as they both have more years of experience in the field. The reason that the one employee's salary is lower is that he/she has fewer years of experience in the field.

H-1B VISA PAYMENT

- All H-1B and Labor Certification Costs are covered under the contract. Incidental and filing fees must be paid by the department.
- Submit check requisitions for individual fees payable to "Department of Homeland Security" with attached envelopes addressed to Fragomen for inclusion with the petition when it is filed.

H-1B VISA PAYMENT CONTINUED...

- Hand Deliver completed Check Requisitions to Elsa Liauwapau or Alice Williams by 2:00 p.m. for next day service.
- The Tax ID# for Department of Homeland Security is 20-1027111.
- Object Code for requisitions is 3811 – “Service by Outsiders”
- Attach completed online questionnaire as backup to your check requisition.

ATTORNEY OFFICE HOURS

- Under our contract, Fragomen holds periodic office hours on campus. These appointments are free of charge and are open to all UM employees.
- To schedule an appointment, employees can send email to UMVisas@fragomen.com.

DISCUSSION AND QUESTIONS