Immigration and Foreign National Faculty

Faculty Affairs Workshop for Administrators
February 29, 2012
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 5-6 months or more through “regular” processing. If your appointment begins on August 15, you need to start the process in February.

• If you do not have that much time, certain visas (H-1B and O-1) can be adjudicated in 15 calendar days for a $1225 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 publication of national circulation (e.g., Chronicle of Higher Education.) Note that previously, it was required that the ad be in “print” but the Department of Labor has relaxed that requirement.

  – 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.
H-1B VISA COSTS

• Department Costs: $325 Filing Fee; $500 Anti-Fraud Fee; ~$100 express courier costs.

• Optional Costs: $1,225 Premium Processing Fee; $735 Expedited Handling Fee to Fragomen; $165 Foreign Degree Evaluation (if necessary)
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. Comparatively inexpensive, and may be renewed for three years at a time. No time limit.

• 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 12 months to obtain “Optional Practical Training” – work experience. Graduates in STEM fields eligible for an additional 17-month extension.

• 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.

<table>
<thead>
<tr>
<th>Name</th>
<th>UM ID#</th>
<th>Title</th>
<th>Date Started At University</th>
<th>Date Started In New Position</th>
<th>Contract Length 9/12 month</th>
<th>FTE</th>
<th>Annual Salary</th>
<th>Highest Degree</th>
<th>Year Of Degree</th>
<th>Institution Of Highest Degree</th>
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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.
I-129 EXPORT CONTROL CERTIFICATION FORM

• Required prior to filing of H-1B and Residency Petitions

• Completed by PI/Supervisor and submitted directly to Office of Research Compliance

• Attach job description and CV of candidate
# Export Control I-129 Certification Form

Please fill in the information via the computer, do not fill out by hand.

Once completed, print, sign & date. Scan the signed copy and e-mail to Wendy Epley & Advise "Add" form.

## General Information

<table>
<thead>
<tr>
<th>Name of Applicant (Foreign National) (as appear on Passport)</th>
<th>Country of Citizenship</th>
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<tbody>
<tr>
<td>Position / Title at UM: Department: Supervisor Name: Supervisor Phone:</td>
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## Export Control Assessment

- **YES**
  - [ ] Have access to equipment or technical information designed, developed, configured, adapted, or modified for a military or space application?
  - [ ] Be provided exception code as part of their planned activity?
  - [ ] Have access to or use technology commercially available, but also utilized in military applications?
  - [ ] Be involved in research activities having restricted publication rights?
  - [ ] Have access to any high performance computer with 2,000 or more Mflops (Millions of Theoretical Operations Per Second)?

## Certification

[Select only ONE statement below by checking the box to the left of the statement]

- A license is **not required** from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person noted above.
- A license is **required** from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary. The Petitioner will prevent access to the controlled technology or technical data by the beneficiary until further notice. The Petitioner has received the required license or other authorization to release it to the beneficiary.

I will notify the University's Office of Research Compliance before:
- Any controlled technology or information is released to the prospective employee, and/or
- The prospective employee moves to a new office or lab, or begins work outside of my control or knowledge.

At the time of completing this form, I affirm the contents of the foregoing certification are true, to the best of my knowledge, information and belief.

<table>
<thead>
<tr>
<th>Supervisor's Printed Name:</th>
<th>Date:</th>
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<tr>
<td>Supervisor's Signature:</td>
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## Office of Research Compliance

- [ ] The Office of Research Compliance has reviewed the above application for certification and approves the request.
- [ ] The Office of Research Compliance has reviewed the above application for certification and denies the request.

**Reason for Denial:**

Visual Compliance Completed: [ ] Cleared [ ] Restricted [ ] ORC Control #

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<thead>
<tr>
<th>Wendy M. Epley, ECoP*</th>
<th>Date:</th>
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<tbody>
<tr>
<td>1-129 Form Received:</td>
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<td>Job Description Received:</td>
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<td>CV / Resume Received:</td>
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<td>RPS Completed:</td>
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Office of the Vice Provost for Research
Contact: Wendy Epley, ECoP*, Office of Research Compliance. W.Epley@miami.edu 305.243.5654

Version: 09-Jan-2012
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 e-check requisitions for individual fees payable to “Department of Homeland Security.”

• Select “FedEx Delivery” and send envelope and airbill addressed to Fragomen to Check Distribution, 129 Ashe Building, as checks must be included with petition when it is filed.
H-1B VISA PAYMENT CONTINUED...

• The Tax ID# for Department of Homeland Security is 20-1027111.
• Payment Type for Filing Fees is “09 – Other Services”
• 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