Fall HR Conference Session:

Immigration/Visa Processing
for
International Faculty and Professional Staff

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(Also processes H-1Bs, TNs for OHR at MSU)
How “hot” is this topic for you?

- I do visa processing (J, TN, H-1B) for international faculty and/or professional staff for my institution.

- I usually work with an immigration attorney if there is an international faculty hire.

- I don’t directly do any visa processing for international faculty and/or professional staff, but my work is impacted (e.g., I-9 verification, retirement, tax residency determination, degree verification).

- I am not involved with any international faculty and/or professional staff issues in my daily work.
Reality – International Students may become International Faculty and Professional Staff

From magazine The Economist article (9/8/05) and survey on Higher Education entitled: “Wandering scholars: For students, higher education is becoming a borderless world”

http://www.economist.com/displayStory.cfm?Story_id=4340017
Outline/Session Overview

- Basics of Non-immigrant Visa Types for employment of international faculty and professional staff
- Processing Steps for H-1B Temporary Worker Visas
- Long-term Retention of International Faculty (including "green card"/PR options)
- Policy and Practice Issues
Who are prospective international employees?

- **Non-immigrant vs. Immigrant**
  
  *Non-Immigrant = Temporary intent*
  
  *Immigrant = Permanent Resident, has PR, is a “green card” holder, has an I-551 stamp in home country passport, has an “alien registration” card, etc.*

- **Questions during interview?**
  
  *Be consistent with all applicants – all must be asked “eligibility” type question: “Are you eligible to work in the U.S.?”*
  
  *MnSCU FAQ: [http://www.ogc.mnscu.edu/immigration.html](http://www.ogc.mnscu.edu/immigration.html)*

- **Goal**
  
  *Individual self-identifies, department recognizes, contacts appropriate resource to proceed with non-immigrant visa processing*

- **Visa Resource**
  
  *Communicate to Deans/Chairs/Departments; Inform on website; Handouts*
  
  *OHR at MSU: [http://www.mnsu.edu/humanres/international.html](http://www.mnsu.edu/humanres/international.html)*
Basics of Non-immigrant Visa Types
Alphabet Soup Resources

- **USCIS**: [http://www.uscis.gov/graphics/services/visas.htm](http://www.uscis.gov/graphics/services/visas.htm)
- **MnSCU**: [http://www.ogc.mnscu.edu/immigration.html](http://www.ogc.mnscu.edu/immigration.html)
- **Minnesota State Mankato**: [http://www.mnsu.edu/iso/faculty/](http://www.mnsu.edu/iso/faculty/)
- **University of Minnesota** (handbook visas 19-23): [http://www.isss.umn.edu/H1BEmployment/default.html](http://www.isss.umn.edu/H1BEmployment/default.html)
Common Non-Immigrant Visa Types for University Employment

- F-1 Student with Curricular Practical Training
- F-1 Student with Optional Practical Training
- J-1 Student with Academic Training
- J-1 Professor, Researcher or Short-Term Scholar
- J-2 (Dependent of a J-1)
- H-1B (Temporary Worker in a Specialty Occupation)
- TN (Treaty/Trade NAFTA)
H-1B1

Temporary Worker performing services in a specialty occupation

- BA/BS or higher in a specific field
- Matching of position/person – no comparison to U.S. workers
- Maximum six years (three yr or less increments)
- Return transportation clause if early termination
- Specific to employer/terms of petition
Example of an approved H-1B1 on form I-797
Processing Steps for H-1B
(Temporary Worker Visas)

Step One: Obtain a prevailing wage (if no bargaining representative)

- Research prior to filing the prevailing wage request with the MN Department of Employment and Economic Security: http://www.flcdatacenter.com/
- Submit prevailing wage request form: http://www.deed.state.mn.us/flc/pre_wag2.htm
- Ensure salary is at or above prevailing wage
- Add prevailing wage/source to Labor Condition Application (Step 2)

Tips: Match job posting/description, explain supervision of employees (student vs. staff)
Example of a Prevailing Wage Determination
August 31, 2005

TO:      Steve Behrenburt
          Inter Faculty Organization

FROM:    Lori Lamb
          Director of Human Resources

RE:      Filing Petition for a Non-immigrant Worker (I-189)

This is to notify you that Labor Condition Applications have been filed to the Regional Department of Labor. Please see attached LCA form ETA 9505.

Thank you.

Attachment
H-1B Processing Steps (Continued)

Step Two: File a Labor Condition Application ETA 9035
http://workforcesecurity.doleta.gov/foreign/h-1b.asp

- Post in two conspicuous locations on site for 10 days
  (if position represented by a union, notify bargaining representative)

- Maintain public access file for each H-1B filed: DOL reg. 20 CFR 655.760
  
  (1) Copy of LCA (Form ETA 9035) [certified from DOL]
  (2) Documentation stating wage rate to be paid to H-1B employee
  (3) Clear explanation of system used to set the "actual wage"
  (4) Documentation employer used for the "prevailing wage"
  (5) Documentation establishing how employer complied with the LCA notice requirement [i.e., documentation of posting]

- Submit copy of approved LCA with USCIS (I-129) petition (Step 3)
Example of electronic filing of LCA

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### Labor Condition Application for H-1B Nonimmigrants

- **Form ETA 9035**
- **U.S. Department of Labor**
- **Employment and Training Administration**

#### Form Instructions:

1. **City**: [State]
2. **Prevailing Wage**: [Yes] [No]
3. **Year Source Published**: [Yes] [No]
4. **Other Wage Source**: [Yes] [No]

#### Wage Source:

- [ ] Prevailing Wage
- [ ] COLA
- [ ] Collective Bargaining Agreement
- [ ] Other

#### Employer Labor Condition Statements:

- **Phone Number**: [Blank]
- **Email**: [Blank]
- **Address**: [Blank]
- **Employer's EIN**: [Blank]
- **Employer's Name**: [Blank]
- **Employer’s Address**: [Blank]

#### Certification:

- **Form ETA 9035 - Page 5 of 4**
- **Form Certified**: [Yes] [No]

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### Form ETA 9035 - Page 3 of 4

- **Program Designation**: [H-1B]
- **Country of Refuge**: [H-1B]
- **Number of Immigrants**: [136789]

#### Employer Information:

- **Employer’s Address**: [Blank]
- **Employer’s Phone Number**: [Blank]

#### Wage Rate:

- **Rate per Hour**: [Blank]
- **Rate per Week**: [Blank]
- **Rate per Year**: [Blank]

#### H-1B Petition:

- **Date of Application**: [Blank]
- **Date Approved**: [Blank]
- **Date Filing**: [Blank]

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**Note:** The above content is a sample of an electronic filing of an LCA form. Actual forms may vary in design and content.
Example of electronic filing/approval of LCA
Step Three: File USCIS forms, immigration and position documentation and fees

- I-129 form; H Classification Supplement to Form I-129; H-1B Data Collection and Filing Fee Exemption Supplement (to be exempt from additional $1,500/750 training fee); $190 Filing Fee and $500 Fraud Prevention and Detection Fee
  
  http://www.uscis.gov/graphics/formsfee/forms/i-129.htm

- I-907 Premium Processing $1,000 (if needed within 15 days)

  http://www.uscis.gov/graphics/formsfee/forms/i-907.htm

Tips: Employer should pay fees, Part 1 Employer info where petition will be sent, collect info on individual and position:

http://www.mnsu.edu/humanres/forms/internationaldocuments.pdf
H-1B1 I-129 Form – example of an individual already on H-1B (portability)
**H-1B1 I-129 Form – example of an individual already on H-1B (portability)**

![Form Image]
**H-1B1 I-129 Form – continued example of H-1B extension**

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Part 4. Processing Information. (Continued)

7. Have you ever filed an immigrant petition for any person in this position? [ ] No [ ] Yes - explain on separate paper

8. If you indicated you were filing a new petition in Part 2(a), within the past seven years has any person in this position:
   a. Ever been given the classification you are now requesting? [ ] No [ ] Yes - explain on separate paper
   b. Ever been denied the classification you are now requesting? [ ] No [ ] Yes - explain on separate paper

9. Have you ever previously filed a petition for this person? [ ] No [ ] Yes - explain on separate paper

10. If you are filing for an entertainment group, has any person in this position not been with the group for at least one year?
    [ ] No [ ] Yes - explain on separate paper

Part 5. Basic Information About the Proposed Employment and Employer

1. Job Title
   Assistant Professor

2. Professional Job Description
   University level teaching

3. LCA Case Number
   1-0013-2095947

4. NAIC Code
   651310

5. Address where the position will work (if different from address in Part 3): [ ] Direct mail and name, city/town, state, zip code
   Department of Economics, 150 Morris Hall, N/A, MS 50001

6. Is this a full-time position? [ ] No [ ] Yes - Wages per week or per year: $000,000

7. Other Compensation (Equivalently)
   Standard fringe benefits
   From: 06/21/2009
   To: 09/20/2009

8. Type of Position - Check one:
   [ ] U.S. citizen or resident
   [ ] Organization
   [ ] Other - explain on separate paper

9. Type of Business
   Educational institution

10. Number Established
    1988

11. Current Number of Employees
    1,500

12. Annual Gross Income
    $0

13. Annual Net Income
    $0
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(From 3-27-2013 to 5-17-2013 (Paper form expiring) to be used until 6-30-2015. Certain forms may not print correctly. Write until 09/20/2015)
**H-1B1 I-129 Supplement Form – example of an individual already on H-1B with H-4 dependent**

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**Department of Homeland Security**
**U.S. Citizenship and Immigration Services**

**H Classification Supplement to Form I-129**

1. Name of petitioner or organization filing petition:

   Minnesota State University, Mankato

2. Name of person or total number of workers or minutes you are filing for:

   [Signature]

3. List the alien’s and any dependent family members’ prior periods of stay in an H classification in the United States for the last five years. Be sure to list only those periods in which the alien and/or family members were actually in the United States in an H classification. NOTE: Failure to provide the information as required could result in a denial of the petition.

   Subject’s Name: [Name]
   Period of stay: [09/01/2004 to 09/01/2005]
   Subject’s Pause: [09/01/2005 to 09/01/2006]

4. Classification sought (Check one):

   - [□] H-1B1 Specialty occupation
   - [□] H-1B2 Trade agreement with Chile or Singapore
   - [□] H-1B3 Exceptional services relating to a cooperative research and development project administered by the U.S. Department of Defense (DOD)
   - [□] H-1B4 Fashion model of national or international renown

5. Complete this section if filing for H-1B1 classification:

   - [□] H-1C Registered nurse
   - [□] H-5A Agricultural worker
   - [□] H-5B Non-agricultural worker
   - [□] H-5J Trainees
   - [□] H-5K Special education exchange visitor program

6. Describe the present status:

   [Signature]

7. Alien’s present occupation and summary of prior work experience:

   [Signature]

8. Statement for H-1B specialty occupation:

   By filing this petition, I agree to the terms of the labor condition application for the duration of the alien’s authorized period of stay for H-1B employment.

   [Signature]

9. Statement for H-1B specialty occupations and U.S. Department of Defense projects:

   As an authorized official of the employer, I certify that the employee will be placed in a position of minor importance to the operation of the project and is not expected to be placed in any of the positions described in the labor condition application.

   [Signature]

10. Statement for H-1B U.S. Department of Defense projects only:

    I certify that the alien will be working in a non-essential area and development project or a cooperative project under a non-essential government-to-government agreement administered by the U.S. Department of Defense.

    [Signature]

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Form I-129, Supplement to Petition to Extend or Change Status, may be used until 04/2012. Certain forms may also be used until 09/2015.
H-1B I-129 - Filing Fee Exemption Supplement
Long-term Retention of International Faculty (including "green card"/PR options)
Retaining International Faculty

- Maintenance / extensions of H-1B status
  - Amend H-1B for significant change in position (dept, title, percentage, etc.)
  - Monitor end date for I-9 verification; Allowed to remain on payroll
    - 240 day rule with receipt [8 CFR 274a.12(b)(20)]; beyond six year maximum for those with pending PR cases
  - Transfer (portability) with receipt [INA sec 214(m) (as amended by sec. 105 of the American Competitiveness in the 21st Century act of 2000 (AC21))].

- H-1B travel / visa issuance

- Dependents (spouse, unmarried children under 21)

- Immigration Attorney Referral (PR policy)
PR options

Most common ways to obtain permanent resident status:

- **Family-based petitions:** A U.S. citizen or permanent resident must petition for the individual, documenting an immediate family relationship limited to spouse, child, parent, sister or brother.

- **Refugee or asylee status:** An individual must document fear of persecution based on membership in a certain class.

- **Certain special situations:** U.S. Government can determine that a particular category of people should be granted U.S. permanent residence (e.g., investors of $500,000+, Soviet scientist program, diversity visa “green card” lottery, Chinese Student Protection Act). Some are on-going programs; others are available one time only.

- **Employment-based petitions:** U.S. employer must document the need for a person’s occupational skills, or the individual must prove he or she has achieved international recognition in his or her field.
Long-term Retention / Employer-Based PR petitions

- **DOL Resource:** Labor Certification: “Special Handling” Section “E. Job Offers for College or University Teachers” filed within 18 months of offer; requires national PRINT advertisement, comparison to US workers to show “most qualified” (need search documentation) http://workforcesecurity.doleta.gov/unemploy/;
  Concern over change in policy to ban alien payment of attorney fees for labor certifications in DOL proposed regulations in 20 CFR Parts 656 [Published 71 Fed. Reg. 7656 (February 13, 2006)]

- **USCIS Resources:** EB-1 “Outstanding Professor/Researcher (no labor certification needed) OR EB-2 “Advanced Degree Professional” with approved labor certification - $195 for I-140 filing (employer pays); $1,000 for I-485 filing (usually individual pays) [additional forms/fees for Advanced Parole and Employment Authorization/EAD, medical exams, each family member/dependent fee for each I-485]
  http://www.uscis.gov/graphics/services/residency/index.htm
Policy/Practice Issues

- Attorney Help – Expensive, still needs review/edits

- Hiring Outside Help – Individual who is not an employee nor an attorney could encounter problems with practicing law without a license (working on cases vs. training)

- Designating Internal Help
  - Steep learning curve – (visa options like OPT, TN, J-1 as alternatives; processing as change of status within U.S. or out of country; J-1 home residence requirement issues)
  - Initial training – (NAFSA: Association of International Educators - www.nafsa.org, IMMPRO - www.immpro.com)
  - Continued education/training – (NAFSA: Association of International Educators www.nafsa.org, Minnesota International Educators - MIE http://www.stthomas.edu/oiss/mie/default.html);
  - Time/funding commitment