

Prepared by the Office of International Affairs  
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RECRUITMENT, SELECTION AND APPOINTMENTS

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A9.610                   **VISAS FOR EMPLOYMENT OF FOREIGN NATIONALS**

1.    **Purpose.** To provide procedures for obtaining appropriate employment visas for foreign nationals, hereinafter referred to as "aliens" (using the common immigration terminology); to fix responsibility for petitioning for visas.
  
2.    **References.**  
  
      304-11 H.R.S.  
      78-1 H.R.S.  
      Immigration and Naturalization Act of 1952 as amended  
      Immigration Reform and Control Act of 1986 as amended  
      Immigration Act of 1990 as amended  
      Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as amended  
      American Competitiveness and Workforce Improvement Act of 1998  
      American Competitiveness in the Twenty-First Century Act of 2000  
      8 CFR Aliens and Nationality  
      20 CFR Employees' Benefits  
      22 CFR Foreign Relations  
      Exchange Visitor Program Designation P-1-1793
  
3.    The University of Hawai'i (referred to as "University") shall comply with applicable federal laws and regulations governing the employment of aliens. The University shall follow regulations and procedures set forth by federal agencies [e.g., U.S. Immigration and Naturalization Service (INS), U.S. Department of Labor (DOL), and U.S. Department of State (DOS)] for immigration and visa-related petitions and applications filed by the University on behalf of alien employees.
  
4.    **Applicability/Responsibility.** These procedures are intended to outline the basic information that is needed to initiate applications for the most common and appropriate visa classifications for the alien employees of the University. These

procedures shall apply to all campuses and activities of the University of Hawai'i.

- a. It is the responsibility of the alien employees and/or alien beneficiaries of immigration petitions and applications filed by the University to:
  - 1) Ensure that the necessary and appropriate entry, visa, and employment authorization documents are completed for themselves and their families, if applicable.
  - 2) Provide information and supporting documents required for petitions and applications filed by the University on behalf of themselves (and their families, if applicable) to the employing department/unit, college administrative/personnel officer, or the Office of International Affairs as requested.
  - 3) File timely applications for extensions when appropriate.
  - 4) Pay applicable filing and visa fees, unless payment by the employer is required by federal regulation.
  - 5) Maintain immigration legal status and keep informed regarding federal regulations affecting their status.
- b. The employing department/unit shall:
  - 1) Follow normal campus recruitment procedures including EEO/AA regulations.
  - 2) Follow normal hiring procedures including completion of Form I-9 Employment Eligibility Verification.
  - 3) Limit non-immigrant visa holders (e.g., F-1, H-1, J-1, O-1, and TN) to temporary appointments only (but may be to permanent positions). Permanent appointments to tenure-track or long-term positions of indefinite duration should be limited to aliens with lawful permanent (immigrant) status.
  - 4) Consult with college/unit administrative officer regarding procedures and documentation required for employment visas.

- 5) Prepare draft petition/application and obtain information and supporting documents for immigration/visa petitions or applications from the alien.
  - 6) Transmit petition/application forms and supporting documents to college/unit administrative/personnel officer.
  - 7) Obtain and attach filing fees if applicable to completed petitions and applications.
  - 8) In the absence of the alien employee, arrange mailing or delivery of petition/application packet to appropriate agency, e.g., U.S. Immigration and Naturalization Service. Send visa documents (e.g., Form IAP-66), approval notices (e.g., Form I-797), and/or other pertinent information to the alien employee.
- c. The college/unit administrative/personnel officer shall:
- 1) Consult with the immigration staff (i.e., the Immigration Specialist) in the Office of International Affairs regarding appropriate employment visas, guidance on forms and instructions for preparing petitions/applications and supporting documents, and other immigration/visa questions.
  - 2) Provide the necessary personnel documents and supporting documents.
  - 3) Transmit forms and supporting documents to the Office of International Affairs (OIA) with a request from the Dean/Director/Provost for processing by OIA.
  - 4) Transmit approvals to hiring department/unit.
- d. The Office of International Affairs shall:
- 1) Assist college/unit administrative/personnel officer in determining appropriate employment visa. Provide instructions and advice pertinent to the preparation of visa petitions/applications.
  - 2) Review and complete visa petitions, including related applications, pertinent to the employment of aliens by the University, as requested by employing units. The

Immigration Specialist in the Office of International Affairs (OIA) or designee shall sign all applicable visa petitions/applications on behalf of the University as the authorized representative of the employer.

- 3) Return signed copies of the applicable visa petitions/applications to the hiring department/unit for transmittal to the alien or U.S. Government agencies, i.e., INS and DOL, as applicable.
  - 4) Conduct related correspondence with U.S. Government agencies on behalf of the University.
  - 5) Receive approval notices and forward to college/unit.
- e. **Use of Outside Attorneys.** In accordance with State of Hawai'i statutes, private attorneys retained by a faculty member may not represent the University of Hawai'i in the filing of an immigration petition or application. If an alien employee retains an attorney to represent the alien,
- 1) All immigration petitions/applications that require the authorized signature of the employer shall be reviewed by the hiring department/unit for accuracy and compliance with University policies and procedures.
  - 2) If the hiring unit supports the petition/application, the petition/application and supporting documents shall be forwarded with a supporting memo from the Dean/Director/Provost for review by the Immigration Specialist for compliance with immigration regulations.
  - 3) The Immigration Specialist shall sign the petition/application on behalf of the University as the authorized representative of the employer and return the petition to the hiring department/unit for filing by the attorney representing the alien.

5. **Guidelines for Obtaining Nonimmigrant Visas for Employment at the University of Hawai'i:**

- a. **General:** Nonimmigrant visas for temporary appointments are limited to a finite period as authorized by INS. The following are guidelines for nonimmigrant visas commonly used by the University for temporary appointments.

**b. J-1 Exchange Visitor Visas**

- 1) The University of Hawai'i is designated by the U.S. Department of State (DOS) as an exchange visitor program sponsor and is authorized by DOS to utilize the J-1 visa for eligible foreign nationals selected to participate in its Exchange Visitor Program.
- 2) The J-1 visa is available to aliens who are bona-fide students, professors, research scholars, short-term scholars, and specialists as defined in the Exchange Visitor regulations (22 CFR) and who seek to enter the United States temporarily as participants in educational and cultural programs designed to "promote the interchange of persons, knowledge, and skills" in such a way as to "promote mutual understanding between the people of the United States and the people of other countries." The J-1 visa is generally used for visiting faculty and researchers, post-doctoral fellows, workshop, seminar and conference participants, and experts in a specialized field of knowledge.
- 3) An exchange visitor's appointment to a position shall be temporary, even if the position itself is permanent. The J-1 visa should not be used for University employees who are candidates for tenure-track or permanent positions.
- 4) The J-1 visa, as a general rule, should be used in those cases of faculty or staff exchange where the alien's stay is temporary in nature. The minimum period of stay is three weeks, except for short-term scholars who have no minimum period of stay. The maximum period of stay shall be in accordance with exchange visitor regulations governing the exchange visitor category, i.e., professors and research scholars, 3 years; short-term scholars, 6 months; and specialists, 1 year.
- 5) Financial support of an exchange visitor may be derived from a variety of sources, including University general fund appropriations.
- 6) Exchange visitors who are subject to the foreign residence requirement are required to return and reside in their home country for an aggregate of two years before they are

eligible to reenter the United States as an immigrant or temporary worker.

- 7) Only University staff who are designated by the U.S. Department of State (DOS) as the Responsible Officer (RO) or as Alternate Responsible Officers (AROs) are authorized to issue and sign IAP-66 forms on behalf of the University. The Responsible Officer of the University's Exchange Visitor Program is the Immigration Specialist in the Office of International Affairs who is authorized by DOS to administer the University's exchange visitor program.
- 8) Processing Procedures: Information about J-1 eligibility requirements and instructions regarding the preparation and processing of the Certificate of Eligibility for J-1 Exchange Visitor Status (Form IAP-66) may be obtained from the Office of International Affairs through the college/unit's administrative or personnel officer. Requests for an exchange visitor to begin a new program, extend an ongoing program, transfer from/to another program, changes of status, and to bring J-2 dependents are submitted by the department/unit through the college/unit's administrative/personnel officer to the Office of International Affairs.

**c. H-1B Visa for Nonimmigrant Worker**

- 1) The H-1B visa is designated for aliens coming temporarily to the United States to perform services in a "specialty occupation." A specialty occupation means an occupation that requires: a) theoretical and practical application of a body of highly specialized knowledge, and b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.
- 2) The H-1B status is used by the University to employ foreign nationals who are temporary faculty members, researchers, and consultants or who are temporarily engaged in professional level activities at the University.
- 3) Financial support for the H-1B alien must be provided by the University. The H-1B filing fee is the sole

responsibility of the University, the cost of which cannot be passed on to the non-immigrant worker.

- 4) The initial visa may be issued for the period of employment up to a maximum of three years, however, faculty can only be appointed on a year-to-year basis subject to annual renewal. Extensions of an H-1B visa status may be requested for up to three additional years, provided that the alien's total period of stay in H-1B status does not exceed six years.
- 5) If the alien employee is terminated prior to the expiration of the approved petition:
  - a) The college/unit administrative officer shall inform OIA. OIA will notify INS of the termination.
  - b) The department/unit is responsible for reasonable costs of returning the alien to his or her last place of foreign residence if the alien is dismissed from employment. If the alien voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been "dismissed."
- 6) Applications on behalf of H-4 dependents are the responsibility of the alien employee.
- 7) Approval notices, notices of action, copies of the certified Labor Condition Application, or other documents for H-1 petitions submitted by the University on behalf of alien employees shall be transmitted to the alien by the college/department/unit as instructed by OIA.

**d. O-1 Visa for Alien of Extraordinary Ability**

- 1) The O-1 visa is designated for aliens having sustained national or international acclaim for extraordinary ability in the sciences, arts, education, business, and athletics.
- 2) The O-1 visa status is used by the University to employ foreign nationals who are temporary faculty members, researchers, and consultants or who are temporarily engaged in professional level activities at the

University. This category is best utilized for the most highly qualified professors and researchers.

- 3) Financial support for the O-1 alien must be provided by the University.
- 4) The initial O-1 visa may be issued for the period of employment up to a maximum of three years. However, faculty can only be appointed on a year-to-year basis subject to annual review. Extensions of the O-1 visa status may be requested in one year increments, with no maximum limit of stay in O-1 status.
- 5) If the alien employee is terminated prior to the expiration of the approved petition:
  - a) The college/unit administrative officer shall inform OIA. OIA will notify INS of the termination.
  - b) The department/unit is responsible for reasonable costs of returning the alien to his or her last place of foreign residence if the alien is dismissed from employment. If the alien voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been "dismissed."
- 6) Applications on behalf of O-3 dependents are the responsibility of the alien employee.
- 7) Approval notices and other notices of action for petitions submitted by the University on behalf of alien employees shall be transmitted to the alien by the college/department/unit as instructed by OIA.

**e. TN Visa for Canadian and Mexican Professionals**

- 1) The TN visa is used by Canadian and Mexican citizens who are temporarily working for a U.S. employer as professionals. The TN classification is part of the North American Free Trade Agreement (NAFTA). Schedule 2 of Annex 1603 of NAFTA, commonly referred to as the TN Schedule, provides a list of the professions that are eligible for TN classification and the evidence required to determine if an individual is qualified to work in that profession.



- 2) The TN visa status is used by the University to employ Canadian or Mexican citizens who are temporary faculty members (college and university teachers), and researchers or who are temporarily engaged in professional level activities in the professional occupations listed in the TN Schedule.
- 3) Financial support for the TN alien must be provided by the University.
- 4) The initial TN visa may be issued for the period of employment up to a maximum of one year. Petitions for extension may be filed by the University in one year increments, with no maximum limit of stay in TN status, provided the position continues to be temporary. Canadians may also renew the TN status by repeating the application process at a U.S.-Canadian preflight or port-of-entry inspection facility.
- 5) If the alien employee is terminated prior to the expiration of the approved petition, the college/unit administrative officer shall inform OIA. OIA will notify INS of the termination.
- 6) Processing Procedures for Canadian citizens:
  - a) Initial Admission: Canadians need not have prior petition approval or a visa to apply for admission to the United States from Canada in the TN category. He/she may present the following documents to a U.S.-Canada port-of-entry or preflight inspection facility:
    - Proof of Canadian citizenship, e.g., Canadian passport, Canadian birth certificate, or certificate of Canadian naturalization. (Canadian Landed Immigrants are not eligible for TN status.)
    - A letter from the employer, i.e., from the University department/unit, providing information about the position (must be on TN Schedule), description of professional activities the applicant will perform (duties and responsibilities), the applicant's educational qualifications or relevant credentials, anticipated length of stay (starting date of hire should be indicated, but the authorized

length of stay will not exceed one year from the date of entry), and amount of compensation.

- Evidence that the alien has the required credentials for the profession as stated in the TN Schedule. Degree diplomas, transcripts, licenses, or other documentatation must be provided in the original form or as certified copies.
  - INS filing fee
- b) Extensions: Information about the TN visa and instructions regarding the preparation and processing of the Form I-129 Petition for Nonimmigrant Worker and related forms/documents to extend TN status may be obtained from the Office of International Affairs through the college/unit's administrative or personnel officer. Requests for extensions, changes in employment, and changes of status are submitted by the department/unit through the college/unit's administrative/personnel officer to the Office of International Affairs.
- 7) Processing Procedures for Mexican citizens: Mexican citizens require prior petition approval and a visa to apply for admission to the United States in the TN category. Information about the procedures for admission of a Mexican citizens in TN status and instructions regarding the preparation and processing of Form I-129 Petition for Nonimmigrant Worker and related forms/documents may be obtained from the Office of International Affairs through the college/unit's administrative or personnel officer. Requests for initial petition processing, extensions, changes in employment and changes in status are submitted by the hiring department/unit through the college/unit's administrative or personnel officer to the Office of International Affairs.
- 8) Applications on behalf of TD dependents are the responsibility of the alien employee.
- 9) Approval notices and other notices of action for petitions submitted by the University on behalf of alien employees shall be transmitted to the alien by the college/department/unit as instructed by OIA.

## 6. Guidelines for Obtaining Immigrant or Permanent Resident Status

a. General:

- 1) Nonimmigrant visa holders may be appointed temporarily to permanent or tenure-track positions. Until they attain permanent resident status ("PRS"), they are considered to be on limited-term or temporary appointments subject to annual renewal.
- 2) Permanent resident status should not be promised or offered as a term of employment when hiring an alien. For faculty appointed to tenure-track positions, offer and appointment letters should clearly state that even though the job advertisement states that the position is tenure-track, the faculty member is not considered probationary until PRS is obtained. Upon attainment of PRS status, the temporary appointment of a faculty member appointed to a tenure-track position may be changed from temporary to probationary.
- 3) UH may file employment-based immigrant petitions on behalf of alien employees in positions that are "permanent" as defined by INS. The decision to obtain permanent resident status for the employee rests solely with the University based on future need, staff resources, and funding.
- 4) The University may initially apply for appropriate nonimmigrant visas for foreign faculty and staff who are offered employment by the University. A nonimmigrant visa permits a qualified alien to be employed by UH and to maintain visa status during the processing of a permanent residence application.

b. Types of Immigrant Petitions Filed by the University of Hawai'i:

- 1) If the alien qualifies for the employment-based immigrant classifications of a) alien of extraordinary ability or b) outstanding professor/researcher, OIA shall process the Immigrant Petition for Alien Worker (Form I-140). In such cases, labor certification is not required.
- 2) If an alien qualifies for the employment-based immigrant classification of a professional with an advanced degree, OIA shall process labor certification applications (ETA 750) for tenure-track foreign faculty who perform

classroom instruction within the 18-month deadline after the alien's selection for the position. If the U.S. Department of Labor approves the labor certification application, OIA will process the Immigrant Petition for Alien Worker.

- 3) An application for labor certification after the filing deadline requires a new recruitment for the position.

c. Processing Procedures:

Information about employment-based immigrant classifications, eligibility criteria, processing procedures, forms, instructions for preparing and processing the Application for Alien Labor Certification, the Immigrant Petition for Alien Worker, and related applications may be obtained from the Office of International Affairs through the college/unit's administrative or personnel officer.

- d. After an immigrant petition has been approved, OIA shall provide the alien with a copy of the approval notice and general instructions regarding the following applications. The alien shall be responsible for obtaining permanent residence by either:
  - 1) Visa Processing - applying for an immigrant visa at an American Embassy or Consulate abroad, or
  - 2) Adjustment of Status to Permanent Resident - applying to INS to adjust status in the United States from non-immigrant status to immigrant status.
  - 3) The alien will be responsible for processing his/her dependents' applications for adjustment of status or consular processing of an immigrant visa.
- e. Upon entry on an immigrant visa or approval of adjustment of status, the alien shall provide the department/college/unit and the Office of International Affairs with evidence of his/her permanent resident status.

7. Special Provisions Governing Foreign Medical Graduates:

The Hawai'i Residency Programs shall prepare and process visa documents for foreign medical graduates who are to participate in its programs.

#### 8. Income Tax Liability of Aliens:

It is the individual responsibility of each alien employee to determine the applicability of federal and state tax laws to his/her taxable income. Under federal tax regulations, aliens are divided generally into two classes, namely, resident aliens and nonresident aliens. In certain instances, U.S. tax treaties may provide an exemption from U.S. income tax on certain amounts earned by the alien employee while temporarily in the U.S. Due to the complexity of federal and state income tax requirements which are subject to change, the alien employee is advised to consult the Internal Revenue Service (IRS), the State Department of Taxation, or his/her tax advisor.