



Understanding International Employment

Mile markers

- We are going to discuss
 - Foreign national employment
 - Immigration status
 - What they can and can't do
 - Recruitment
 - Hiring/On Boarding
 - Miscellaneous issues
 - Questions, questions, questions at the end - for you to ask
- We are NOT going to discuss
 - The “nuts and bolts” paperwork involved
 - How to apply for the visa
 - Banner coding
 - (If Citizenship=N, status must be coded in GOAINTL with a start date)
 - Professional entertainers
 - (Can't give performances, paid or not in B-1/B-2/Visa Waiver status)
 - B-1/B-2 - they cannot be employees

Definitions

- Foreign National = anyone other than a U.S. citizen or permanent resident.
- Immigration status = how is a foreign national is present in the U.S.
- SEVIS = Student Exchange Visitor Information System used to issue F, J immigration documents and for required federal reporting
- DOL = Department of Labor, Federal not State
- USCIS = U.S. Citizenship and Immigration Service
- Tax Residency determination = determination of U.S. tax residency. Foreign nationals may become U.S. tax residents. It only impacts U.S. tax withholding and which U.S. tax return they will file.

Immigration status

- To legally work in the U.S., foreign national must have employment authorization
- Every immigration status has some kind of employment restriction
 - Violation of restriction = immigration status violation for individual AND
 - Potential DOL violation for employer = employing someone not authorized AND
 - Unlawful Presence (can = ban to U.S. entry)

Immigration categories

- Common categories used at UAF
- Document examples, employment and tax withholding info at http://uaf.edu/files/oip/Immigration-101-rev-02_2016.pdf
 - B-1/WB (aka visa waiver for Business)
 - B-2/WT (aka visa waiver for Visitor) - NO work
 - F-1 Student on campus or OPT/STEM OPT
 - J-1: U.S. Department of State Exchange Visitor Program
 - H-1B: Specialty Occupation
 - TN: Trade NAFTA limited to Canadian and Mexican citizens
 - E-3: Special category limited to Australian citizens
 - O-1: Person of Extraordinary ability

Questions, questions, questions....

- What exactly are they going to do (why are they here)?
 - Study?
 - Research?
 - Teaching?
 - Services?
 - Other?
- How long will they be here (temporary - really? Or long term employment?)
- Where will they be working?
- Is the position tenure track?
- Where in the world are they coming from?

Hiring students - F-1 status during academic program

- Students are authorized to work on campus,
 - no more than 20 hours/week while classes are in session
 - no restriction during official vacation periods
 - no restriction on type of position
- What about off-campus fieldwork?
- Student graduating? Program completion policy: <http://uaf.edu/oip/current-intl-student/program-completion/index.xml>
 - Earlier of 2 months from date of defense OR date the academic dept. chair signs report of thesis
 - Employment ends at that date - TA/RAs may need to end before the end of the semester

Hiring students - F-1 status after graduation

- OPT - 1 year employment authorization
 - File with USCIS service center
 - Cost to student - \$410 (October, 2018)
 - Processing time: 3 months+ (STEM longer)
- Employment must be related to field of study
- Can be fulltime - no restriction on hours
- STEM OPT - 24-month extension
- Transition (change of status) to H-1B?

Students - F-1 status - Status Violations

- Employment exceeding 20 hrs/week
 - Termination of SEVIS record;
 - Unlawful presence begins AND
 - Employer DOL violation for exceeding maximum number of authorized hours.
- Enrollment
 - Grad: 9 credits/semester, at least 6 in-class
 - U/G: 12 credits/semester, at least 9 in-class
 - Unauthorized drop below full time status before dropping
 - Requires termination of SEVIS record
 - Unlawful presence begins

J-1 Exchange Visitors

- Department of State program
 - Purpose: Promote mutual understanding between the people of the U.S. and other countries by means of educational and cultural exchange.
 - “Mini-diplomat”
 - May be paid or unpaid but must document available funding to support program activity(ies)
 - Requirements:
 - Orientation
 - Health insurance coverage - UA health plans do NOT meet DOS requirements
 - Cultural component
 - Bars to repeat participation:
 - 2-year home stay - direct government funding from U.S. or home govt OR if skill is on Home Skills list
 - Research Scholars/Professors - 2-year out of U.S. requirement following program
 - Allowable Payments
 - Employment
 - Travel expenses (requires sponsor approval if from non-sponsor source)
 - Honorarium (requires sponsor approval if from non-sponsor source)

J-1 Exchange Visitors, continued

- <http://www.uaf.edu/oip/info-departments/j1-visa/>
- Not appropriate for hires resulting from bona fide recruitments
- Must have exchange and cultural components
- May be used for non-employees (not discussed in this session)
- Subcategories
 - Professor - cannot be tenure-track position
 - Scholar (Research - up to 5 years; Short-term - up to 6 months)
 - Student Intern (up to 12 months)
 - Students (Degree and non-Degree)

J-1 Exchange Visitors, continued

- Allowable activities
 - Collaborative research, teaching
 - Contractual activities
 - Students may be employed subject to student employment rules (20 hrs/wk)
 - Requires IPI employment authorization letter before work starts
- NOT allowed:
 - Tenure-track assignments
 - Clinical patient care, to include veterinary clinicals

J-1 Exchange Visitors, continued

- Request deadline: 3 months before arrival
- Fees
 - Internal Processing fee:
 - Scholars/Professors: \$400 must be paid by UAF hosting unit
 - Student interns: \$250 may be paid by intern or hosting unit
 - Revisions/Extensions: \$250 must be paid by UAF hosting unit
 - SEVIS fee: \$180 (October, 2018) \$220 (Proposed)
 - May be paid by visitor or UAF hosting department

J-1 Exchange Visitors - Status Violations

- Full time enrollment requirements - DE courses cannot count towards F/T
- J-1 Scholars/Student Interns - located at/employment only with UAF
- Must maintain program objectives

H-1B Specialty Occupation

- UAF H-1B hiring policy
 - Faculty/research where PhD or terminal degree is required for *position*
 - Competitive recruitment or direct hire
 - Requires:
 - USCIS-filed petition
 - DOL Labor Condition Application
 - Fees:
 - Internal processing fee: \$250
 - USCIS: \$460 + \$500 (for initial)
 - » Optional Premium Processing: \$1,410
 - Educational credential evaluation for degrees awarded from non-U.S. institutions
 - Export control certification

H-1B Specialty Occupation - Status Violations

- Terms and conditions of employment cannot be changed without amended petition filed
 - Cannot change job duties/responsibilities/location/maybe pay increases
 - Benching - cannot place in unpaid status, i.e., LWOP without prior International Programs approval
 - BOR *AND* International Programs processes **MUST** be followed for requesting voluntary LWOP
 - Cannot be due to budget constraints

Other statuses

- Trade NAFTA (TN)
 - Canadian and Mexican citizens
- E-3 (Australians)
 - Requires DOL Labor Condition Application
- O-1 (Person of Extraordinary Ability)
 - When nothing else will work
 - Requires outside immigration attorney

Export Control

- Attestation required for H-1B petitions
- IPI and ORI requires export control form for any beneficiary: J-1, H-1B, TN, etc.
<http://uaf.edu/files/oip/Export-Control-Request-.02.2015.pdf>
- Because:
 - The Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) are not limited to sponsorship of new employees in H-1B status
 - Applies to all non-U.S. citizens
 - Educational institutions employing foreign nationals must have compliance processes in place to determine whether a deemed export license is required under U.S. export control laws
 - Questions: UAF Office of Research Integrity
<http://www.uaf.edu/ori/export-controls/>

Employer-sponsored Status Comparisons

IMMIGRATION STATUS:	J-1	H-1B	TN	E-3	O-1A
	http://www.uaf.edu/oip/info-departments/j1-visa/	http://www.uaf.edu/oip/info-departments/h-1b-visa/	http://www.uaf.edu/oip/info-departments/tn-visa/	https://www.uaf.edu/oip/info-departments/	https://www.uaf.edu/oip/info-departments/
Duration Allowed	Short-Term Scholar: 6 months; Student Intern: 12 months; Prof/Res Scholar: 5 years.	6 years (3 year increments); Exceptions. (i.e. PR application pending)	Undetermined; up to 3 years at a time.	Indefinite; up to 2 years at a time.	Initial up to 3 years, with extensions in 1- year increments for an indefinite period.
Prevailing Wage Required	No	Yes	No	Yes	No
Country of Citizenship	Any	Any	Canada and Mexico	Australia	Any
Immigrant Intent	No	Yes	No	No	Yes
Department Cost to File Initial Petition w/USCIS	N/A	\$460: I-29 Filing Fee; \$500: Fraud Prevention Fee.	\$100 - Employee cost; Apply at border or consulate.	\$460: I-129 Filing Fee	Dept. pays attorney fees: \$4-6,000; \$460: I-129 Filing Fee.
Qualify for Premium Processing w/USCIS	N/A	Yes, w/dept. approval; Cost: \$1,410.	Only on extensions; Cost: \$1,410.	No	Yes, w/dept. approval; Cost: \$1,410.
Department Cost: Amendments & Extensions w/USCIS	N/A	\$460: I-129 Filing Fee. Eligible for Premium Processing w/dept. approval	\$460: I-129 Filing Fee. Eligible for Premium Processing w/dept. approval	\$460: I-129 Filing Fee	\$460: I-129 Filing Fee. Eligible for Premium Processing w/dept. approval.
IP&I Processing Fees via JV	New: \$400 Extensions/Amendments: \$250	\$250	\$250	\$250	\$250
Fees payable by employee/ student intern	\$250 - Student Intern	None. Dependents are the responsibility of the employee.	Employee responsible for fees paid at border/embassy.	None. Dependents are the responsibility of the employee.	None. Dependents are the responsibility of the employee.
Immigration Status Document	DS-2019	I-797 Approval Notice	I-797 Approval Notice and/or Passport Arrival Stamp	I-797 Approval Notice	I-797 Approval Notice
Dependent Work Authorization	Yes, with USCIS approval.	No, unless pending PR process.	No	No	No
2 Year Home Residency Requirement (212 (e))	Not all Js are subject; must fulfill or acquire waiver.	Not applicable	Not applicable	Not applicable	Not applicable
English Proficiency Requirement	Yes	No	No	No	No
Mandatory Health Insurance	Yes	No	No	No	No
Grace Period for Timely Filed Extensions	Not applicable	240 days from the first day of the requested extension.	240 days from the first day of the requested extension.	240 days from the first day of the requested extension.	240 days from the first day of the requested extension.
Amended Petitions (change in title, dept., % of employment, duties)	Updated documents required before change can take place. Subject Field and EV category cannot change.	\$460: I-129 Filing Fee. Must have approval notice from USCIS PRIOR to change taking place.	\$460: I-129 Filing Fee. Must have approval notice from USCIS PRIOR to change taking place.	\$460: I-129 Filing Fee. Must have approval notice from USCIS PRIOR to change taking place.	\$460: I-129 Filing Fee. Must have approval notice from USCIS PRIOR to change taking place.
Grace period when Status Expires	30 days	None, unless noted on I-94 / passport	None	None	None
Travel Endorsement Required	Yes (valid for 6 months)	No (carry original I-797)	No (carry original I-797, if any)	No (carry original I-797)	No (carry original I-797)
Valid Visa stamp for US entry	Yes (except Canadians)	Yes, (except Canadians)	Canadians - no Mexicans - yes	Yes	Yes
Ways to Extend	Mandatory department request.	Mandatory department request.	Mandatory department request. OR: Canadians-drive to border Mexicans can go to consulate	Mandatory department request.	Mandatory department request and specify UAF sponsored attorney.
Title	Non-tenure track Academic Staff, Visiting Faculty, Non-Degree Students, Student Interns.	Faculty (Tenure-Track), Researchers (Non-Tenure Track), Academic Staff, and very limited university staff.	Position must be on Schedule 3 of the Trade NAFTA Treaty.	Academic Staff, Visiting Faculty and very limited university staff.	Faculty (Tenure-Track), Researchers (Non-Tenure Track).
Accept Outside Payments?	Prior approval from IP&I (or other program sponsor).	Only per diem (no honorariums).	Only per diem (no honorariums).	Only per diem (no honorariums).	Only per diem (no honorariums).

Timelines:

- H-1B, O-1 petitions can be filed 6 months before requested start date - highly recommended if possible
 - under current processing times, if new hire, plan on premium processing
 - extensions: if not approved by authorization end date, automatic 240-day extension from authorization end date
 - H-1B employee cannot travel outside the U.S. during 240-day extension period
- J-1 - IPI requires at least 3 months in advance of start date
- F-1 - OPT processing times currently 3 months but may be longer; STEM OPT 4-5 months or longer (automatic 180-day extension from OPT end date)

Faculty Recruitments

- Recruitments?
 - Assume all *faculty* recruitments will result in a foreign national selection
 - Include ad in national publication, may be print or online - keep documentation (invoice, ad, online posting copy 1st and last days)
 - Educational requirements -
 - Roadblocks - ABD, Non-specific majors
 - Lays groundwork for possible PR sponsorship
 - Staff hires - not eligible for any sponsorships
 - Possible exceptions: Research Professionals?

PR Sponsorship

- UAF PR sponsorship policy restricted to faculty and researchers in positions requiring PhD or terminal degree
- Use of UA General Counsel approved attorney required
- UAF only required to pay attorney labor certification costs
- Special provisions for teaching faculty (EB-2 category)
 - Requirements:
 - Competitive recruitment
 - National journal/publication **advertisement** including degree and specific major field(s) required for position
 - Successful applicant must have all requirements at start date
 - DOL certification filed within 18 months of date of *offer* (not start date)

PR Sponsorship, continued

- Other options
 - EB-1: Extraordinary Ability
 - Self- or employer-petitioned
 - EB-2: Professionals with Advanced Degrees
 - Employer-sponsored
 - DOL Labor certification required
 - Exception: National Interest waiver
 - Self- or employer-petitioned
 - No Labor certification

Questions

- How soon should we start the paperwork?
 - As soon as possible!!!
 - USCIS service processing delays - H-1Bs can take 6-8 months or longer
 - Visa appointments - delays during high/peak travel times (DOS visa wait time link at bottom of page <https://www.uaf.edu/oip/info-departments/>)
 - Travel ban and extreme vetting
 - Travel planning - wait until visa is issued before purchasing plane tickets - in case visa is denied or delayed

Questions, continued

- What info do I need from my P.I.s to get started?
 - Each category has specific requirements
 - See authorization request forms for requirements
 - Common information needed
 - Offer or contract letter
 - Specific duties/responsibilities
 - Requirements for position
 - Location of employment
 - Salary/funding

Employment Verification and On Boarding

- New hire paperwork - PPAs/HR function
 - I-9 USCIS Pub M-274 Guidance for Completing I-9
<https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>
 - Immigration documents - examples at Immigration 101 http://www.uaf.edu/files/oip/Immigration-101-rev-02_2016.pdf
 - Glacier On-line Tax Compliance Tax system required every year for ALL foreign nationals who do not have U.S. permanent resident status aka Green Card
<http://www.online-tax.net>

On Boarding, continued

- Health insurance
 - New employees - gap period
 - ACA requirements - resident vs non-resident
 - J-1 U.S. Department of State Exchange Visitor Program health insurance requirements (only status having federal insurance requirements)
 - UA health plans do NOT meet DOS minimum insurance requirements. If in benefit-eligible position, must have supplemental insurance policy to meet requirements.
 - Deductible - no more than \$500 per event
- Orientations
 - UAF HR
 - IPI

Trailing Spouses

- What about trailing spouses aka dependents?
 - With the exception of J-2 dependents, no employment authorization = can't work without their own specific employer-sponsored authorization
 - May take classes either full- or part-time
 - Exception: F-2 dependents can only be part-time students

Tax Status

- Foreign national tax residency status must be determined every year
- Tax status can change from nonresident to resident to nonresident depending on immigration status
- Penalties to employer for incorrect tax withholding
- UA/UAF uses Glacier Online Tax Compliance
 - HR/AP function not International Programs
- F-1 students: change in payment type can impact immigration status – TA/RA changes to Fellowship = different withholding rules, potential change in immigration status requirements (course enrollment)

Questions

Your Questions???????????

Contact info for paperwork assistance:

- International Programs and Initiatives
Carol Holz - carol.holz@alaska.edu
Joanna Cruzan - jgcruzan@alaska.edu (Scholar questions)
Reija Shnoro - rsshnoro@alaska.edu (F-1 Student questions)
- www.uaf.edu/oip
Select "Information for UAF Departments"
(<https://uaf.edu/oip/info-departments/>)

NOTE: All forms are available here. The page has been reorganized for your easier reference.