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**Athens, OH 45701-
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To: Ohio University Hiring Managers
From: Kathy A. Krendl, Executive Vice President and Provost
Re: Supporting Foreign National Faculty Hiring and Employment-Based Immigration—New Approaches

As a new hiring season begins, I would like to draw your attention to some important matters that relate to hiring foreign nationals for faculty positions. Please read this memo carefully and act on its contents. Share it with anyone in your unit who works with faculty hiring and/or immigration issues. Your chair, director, or dean has received a copy of the information contained in this memo.

If you have questions about the change in PeopleAdmin contact, Gwen Brooks, Director, Staffing and Records Services, Human Resources (brooksgk@ohio.edu). On the EVPP hiring pool or prevailing wage determinations for H-1B visas, contact Krista McCallum Beatty, Director, International Student and Faculty Services (ISFS) (mccallum@ohio.edu).

Conducting Faculty Searches

As you cannot know in advance if the top choice for a faculty position will be a foreign national, it is best to conduct all faculty searches with an eye to U.S. Department of Labor employment-based immigration requirements. Exercising this kind of prudence means that if a foreign national ends up being the candidate of choice, the sponsoring of that individual for permanent residency can be pursued in the most efficient and cost-effective manner.

All faculty searches for permanent positions that involve classroom teaching should from the outset meet the requirements needed to take advantage of the U.S. Department of Labor's more efficient and less expensive immigration option (known as Special Recruitment) created specifically for permanent faculty with teaching responsibilities. The specific requirements of Special Recruitment can be found in Appendix I, but there are two that need to be highlighted:

- Departments and schools must place **print** advertisements for all searches in national professional journals, must keep a copy of the advertisements as they appear in the journal (not a copy of what was submitted to the journal), and the advertisements must be placed during the recruitment period.¹

To better assist hiring managers with print advertising requirements, modifications to the online posting requisition process have been made through PeopleAdmin. In the past, recruitment and advertising information was required to be submitted as a part of the Affirmative Action Recruitment Report near the end of the search process. Starting immediately, information about active recruitment and advertising plans will now be requested during the posting approval process. This will allow for the opportunity to review recruitment and advertising plans to ensure that they meet the requirements necessary to use Special Recruitment.

- In the case of hiring a foreign national, the department/school must contact ISFS within **12 months** of the offer letter to begin the Labor Certification process.

¹ The language of the statute specifically asks for "a copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements."

If the printed advertisement requirement or any other requirement for Special Recruitment is not met and you hire a foreign national, the university will be unable to use the Special Recruitment option to obtain permanent residency status. A process known as Standard Filing would have to be pursued.

Departments and schools that end up having to follow the Standard Filing process due to neglect in placing a print advertisement in a national journal and in maintaining a proper copy of that advertisement should anticipate that central resources will not be supplied to cover the costs of outside immigration counsel which is typically required to complete standard filing applications.

Similarly departments and schools that fail to contact ISFS within 12 months of the offer letter to file the labor certification should anticipate bearing the financial responsibility for having to use Standard Filing.

Defraying Employer Costs

In a departure from years past, Department of Labor regulations now state that employees cannot pay any of the employer's costs associated with the filing of an H-1B petition or a Labor Certification.

In order to allow departments and schools the ability to hire the best candidates for faculty searches currently underway, the Office of the Executive Vice President and Provost has created a pool of funding to help defray costs for new faculty associated with the filing of H-1B petitions or Labor Certifications (costs to be covered include ISFS charges and federal application filing fees). Faculty eligible to receive funding are those who will begin their careers at Ohio University in AY 2009-2010. ISFS will "bill" EVPP for the costs (see, Appendix II). No additional financial paperwork will be required on the part of schools, departments, or colleges.

Prevailing Wage Determinations for H1-B Visas

In order to take advantage of the "safe-harbor" protection offered by the Department of Labor in conjunction with prevailing wage determinations for H-1B visas, Ohio University will obtain its prevailing wage determinations through state workforce agencies. What this means for you as a hiring manager is that the use of state workforce agencies may slow down the processing of H-1B visas. It may take up to 20 days (or more during February and March) to receive a prevailing wage determination from state workforce agencies. Please plan accordingly.

Issue	What's Being Changed	Why	What Does It Entail?
<p>Placing a print ad in a national journal to allow schools & departments to take advantage of the Special Recruitment immigration process if they end up hiring a foreign national.</p>	<p>In PeopleAdmin for the requisition, you will be asked to provide the recruitment plans for the search.</p> <p>Previously, you had to report about how the position was advertised and what active steps were taken to recruit females and minorities. You be asked the same things, but instead of asking what you did, you will be asked about what you plan to do.</p> <p>HR will be reviewing to make sure there is a plan to do a print advertisement and if not, will contact the hiring manager to explain the necessity of placing one.</p>	<p>Special Recruitment is the most efficient and least costly employment-based immigration option.</p> <p>The first step in being eligible to use Special Recruitment is to have placed a print ad in a national journal during the recruitment phase of a search.</p>	<p>Departments & schools will have to pay for a print ad in a national journal. Costs can be reduced by working with Gwen Brooks who can help several units coordinate discounted group buys of advertising.</p> <p>The effect of the PeopleAdmin change should be minimal. Recruitment plans are already required. What has changed is the timing of when those plans are reported.</p>
<p>Employees can no longer pay any of the employer's costs for H-1B petitions or Labor Certifications.</p>	<p>EVPP has created a pool of funding, for faculty hired to begin their careers at Ohio University in 2009-2010, to help defray the costs that must be paid by the schools or departments.</p>	<p>To enable schools and departments to hire the best candidates for their faculty jobs.</p>	<p>Should not require any additional paperwork on the part of schools & departments. ISFS will "bill" EVPP.</p>
<p>Prevailing wage determinations for H-1B visas.</p>	<p>Ohio University will obtain its prevailing wage determinations through state workforce agencies.</p>	<p>To be able to take advantage of the Dept. of Labor's "safe-harbor" provision and protect the university's ability to hire foreign nationals.</p>	<p>Need to plan ahead. In some cases it may take 20 days or more to receive a prevailing wage determination from a state workforce agency.</p>

APPENDIX I

Criteria for “Optional Special Recruitment and Documentation Procedures” for Labor Certification²

In recognition of the special hiring needs of universities, the Department of Labor established “Optional Special Recruitment and Documentation Procedures” (Special Recruitment) for Labor Certification. Special Recruitment allows a university to use its regular competitive selection process and select the best-qualified candidate for a position, regardless of the availability of US workers who meet the minimum qualifications for the position. This option is very advantageous to the university and in effect provides a fast track to adjustment of status (green card application) for the employee.

In order to take advantage of this option, the recruitment and selection process must meet the following criteria:

1. The position must be a permanent “college or university position, which involves some actual classroom teaching” and the intention must be that the individual will be continuously employed; typically, this will mean that the position is either tenured or tenure-track. The amount of teaching is not specified, however, the courses should be regularly scheduled classroom courses.
2. The recruitment and selection process must be a competitive process and the foreign national selected for the position must be the best-qualified candidate for the position.
3. The recruitment for the position must include at least one print advertisement in a national professional journal appropriate to the field. The print ad must contain the position title, duties (including classroom teaching), and requirements for the position (level of education, field of education, years of experience if any). A copy of the actual print advertisement including the name of the journal and the date(s) of publication of the ad is required.
4. Additional recruitment is required and must be documented. The regulations do not specify the nature of the additional recruitment, but it must be able to be documented. Human Resources can provide guidance on additional recruitment efforts. By way of example only, a typical additional recruitment effort would be an on-line position posting on a widely-known employment site.
5. At the end of the selection process, a statement must be prepared and signed by the hiring authority outlining in detail the complete recruitment procedure undertaken, the total number of applicants for the job opportunity, and the specific lawful job-related reasons why the foreign national is more qualified than each U.S. worker who applied for the job. This requires the hiring authority to fully complete the university’s on-line recruitment report.
6. A final report from the search committee and/or administrative body making the recommendation or selection of the foreign national must also be completed at the end of the competitive recruitment and selection process. This report must include the date of selection/offer. ISFS can provide a template for the report.
7. The Special Handling Labor Certification MUST be filed within 18 months of the date of the offer letter for the position. Departments must contact ISFS no later than 12 months after the date of the offer letter to begin the process of filing a Labor Certification. Filing a Labor Certification can take several months of preparation work. For most new hires, the Labor Certification process will begin within the first year of employment.

² Resources used:

NAFSA Adviser’s Manual Online. NAFSA: Association of International Educators, Washington, DC.

Goldblum, J.W. (2005) *Special Recruitment and Labor Certification for College, University, and Medical School Teachers*, in David Stanton Manual on Labor Certification, 3rd Edition. American Immigration Lawyers Association.

Departments that fail to meet these requirements will need to pursue a Standard Filing Alien Labor Certification for positions supported for Permanent Residency. This process involves re-advertising the position to test the labor market for qualified US workers. The process is costly, time consuming, and does not guarantee the university will be able to file a Labor Certification.

Please direct questions to Krista McCallum Beatty, Director, ISFS, mccallum@ohio.edu.

APPENDIX II

**International Student and Faculty Services
Employment-based Immigration Fees**

Revised August 2008

Amount of fee kept by ISFS to cover administrative fees, etc. in parentheses

Application	Fees	Payment
H1B Temporary worker in a Specialty Occupation*	\$1800 (\$980) ISFS (\$820) App. Fee	MUST be paid by the employer
O1 Alien Worker of Extraordinary Ability	\$1800 (\$1480) ISFS (\$320) App. Fee	May be paid by the employer or employee or shared by the two
H1B Extension*	\$1300 (\$980) ISFS (\$320) App. Fee	MUST be paid by the employer
O1 Extension	\$1300 (\$980) ISFS (\$320) App. Fee	May be paid by the employer or employee or shared by the two
Premium Processing Service for H1B	\$1000 (0)	May be paid by employee only in certain circumstances
Premium Processing Service for O1	\$1000 (0)	May be paid by the employer or employee or shared by the two
Labor Certification for teaching positions*	\$1500 (\$1500) ISFS	MUST be paid by the employer
Immigrant petition for EB1 Outstanding Researchers/Professors	\$2200 (\$1500) ISFS (\$700) App. Fee	May be paid by the employer or employee or shared by the two
Immigrant petition for EB2 Member of the professions	\$700 (\$225) ISFS (\$475) App. Fee	May be paid by the employer or employee or shared by the two

*Costs and fees eligible to be covered by EVPP Immigration-Based Employment Fund. Other fees and costs will not be covered by the EVPP fund.