



UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES



DEC 16 2009

SUBJECT: Employment of Non-Citizens

Instruction 1400

(CHR)

ABSTRACT

This Instruction provides policy and guidance regarding the employment of non-citizens at the Uniformed Services University of the Health Sciences (USUHS). Included in this Instruction are regulatory requirements for both the Temporary Professional Worker (H-1B) and Exchange Visitor (J-1) Visa Programs.

A. Reissuance and Purpose. This Instruction reissues USUHS Instruction 1400^a and establishes USUHS policies and procedures for the employment of non-citizens. Policies and procedures for this program are established within the guidelines and regulatory requirements of 8 CFR, Part 214^b, 22 CFR, Part 514^c, 20 CFR, Part 655^d, and 5 CFR, Part 7^e.

B. References. See *Enclosure 1*.

C. Applicability. This Instruction applies to USUHS Excepted Service positions supported by appropriated or extramural funds.

D. Definitions. See *Enclosure 2*.

E. Policy. It is USUHS policy that:

1. The University shall employ non-citizens only in the absence of available qualified U.S. citizens after reasonable

recruitment efforts have been made.

2. Non-citizens with appropriate visas may be hired by the USUHS for positions in the Excepted Service under applicable Office of Personnel Management (OPM) regulations, without the special approval of OPM.

3. USUHS faculty and staff members paid with appropriated funds and employees paid by grants or extramural research funds, are appointed to positions in the Excepted Service as authorized in 5 CFR, Part 213^f. All USUHS H-1B and J-1 employees will be appointed under one of the Excepted Service authorities cited above or any other Excepted Service authority as authorized by OPM.

4. Federal agencies, in general, may not hire non-citizens who would be paid from appropriated funds. The Department of Defense (DoD) is exempt from this prohibition in accordance with provisions of the DoD Appropriations Act, 1996^g that states "provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense...."

5. As an accredited university that includes a medical school, a graduate school of nursing, and a graduate program specializing in the basic sciences, the USUHS is uniquely qualified to support an exchange program through which citizens of foreign countries can participate in medical/scientific research. The USUHS has established and administers its J-1 Visa Program within the parameters of OPM regulations governing appointments and benefits for Federal employees and the United States Information Agency (USIA) regulations governing the Exchange Visitor Program.

6. When a non-citizen is determined to possess unique knowledge and skills that will further the USUHS teaching and research programs, the USUHS shall submit to the U.S. Citizenship and Immigration Services (USCIS) a petition for an H-1B visa. Approval will be based on information provided by the Chair of the Department or the Head of the organizational element of the Department or Office in which the H-1B visa holder will work. Specific procedures and information requirements are outlined in *Enclosure 3*. The request memorandum and all supporting documents must be submitted through the Director, Civilian Human Resources (CHR).

7. Non-citizen permanent residents (e.g., green card holders) may be appointed to USUHS positions in the Excepted Service.

8. The University shall not petition for a non-immigrant to obtain permanent residency, or sponsor a petition for citizenship, for a person on a visa.

F. Responsibilities.

1. The President, USUHS shall:

a. Review and approve/disapprove requests for H-1B visas for USUHS employees, other than those employees of the School of Medicine and the Graduate School of Nursing; and

b. Delegate approval authority to request an H-1B visa from the USCIS as appropriate to the Dean, School of Medicine (DEN), and the Dean, Graduate School of Nursing (DSN).

2. The Dean, School of Medicine and the Dean, Graduate School of Nursing shall review and approve/disapprove requests for H-1B visa petitions for temporary professional workers in their schools.

3. The Director, Civilian Human Resources shall:

a. Ensure that the USUHS program for the employment of non-citizens complies with the Department of State, Department of Justice, USCIS, and Department of Labor regulations.

b. Provide advice to USUHS managers and supervisors in regard to the employment of non-citizens.

c. Serve as the Responsible Officer for the USUHS J-1 Visa Program.

d. Ensure that the non-citizens employed by the USUHS are informed of their responsibilities in regard to payment of Social Security Taxes (FICA), Federal Income Tax, and State Income Tax.

e. Ensure that all non-citizens selected for participation in the USUHS J-1 Visa Program receive pre-arrival information and materials on:

(1) The purpose of the USUHS J-1 Visa Program.

(2) Home-country physical presence requirements.

(3) Travel/entry into the U.S.

(4) Housing.

(5) Fees payable to the sponsor.

(6) Other costs that the exchange visitor will likely incur (e.g., living expenses) while in the U.S.

(7) Health care and insurance.

(8) Other information that will assist the exchange visitor to prepare for his/her stay in the U.S.

f. Ensure that all non-citizens employed under the J-1 Visa Program receive an orientation that includes information on:

(1) Life and customs in the U.S.

(2) Local community resources (e.g., public transportation, medical centers, schools, libraries, recreation centers, and banks) to the extent possible.

(3) Available health care, emergency assistance, and insurance coverage.

(4) A description of the USUHS J-1 Visa Program.

(5) Rules that the exchange visitor is required to follow under the USUHS J-1 Visa Program.

(6) Address of the sponsor and the name and telephone number of the Director, CHR, who is the responsible officer.

(7) Address and telephone number of the J-1 Visa Program Services of the State Department and a copy of the J-1 Visa Program brochure.

g. Ensure that all reporting requirements for the J-1 Visa Program are met.

h. Prepare Labor Certifications and file with the Department of Labor.

i. Prepare Two-Year Residency Waiver Requests and forward to DoD for review and submission to the State Department and DoD.

j. File petitions for H-1B visas, visa renewals, and dependent visas with the USCIS.

k. Keep all records required by the

H-1B or J-1 visa regulations and records as stipulated under 22 CFR, Part 514^c and 20 CFR, Part 655^d.

l. Ensure that all non-citizens have appropriate visas (non-immigrant or immigrant) for employment in the U.S. prior to appointment at the USUHS.

4. Department Chairs/Activity Heads shall:

a. Certify that, based on reasonable recruitment efforts, qualified U.S. citizens were not available before selecting a non-citizen for a position. Recruitment efforts and sources shall be described and reasons for the selection of a non-citizen will be forwarded to CHR along with the request for visa processing and appointment. See *Enclosure 4* for a sample format for this certification.

b. Submit all required documentation for the processing of non-citizen appointments to CHR as soon as possible after determining that a visa is required. Processing time for visas may be as little as two months, as long as six months, or longer depending on the complexity of the individual case.

c. As prescribed by USUHS Instruction 1417^h, notify CHR by submission of a Request for Personnel Action (SF-52) when an employee under an H-1B or J-1 visa is scheduled to leave the USUHS. Notification should be forwarded at least two weeks in advance of the employee's departure.

d. Ensure that non-citizens under their employment report to CHR prior to beginning work.

5. Non-Citizens employed under H-1B or J-1 visas shall:

a. Report to CHR for in-processing before reporting to the office where they will work when they begin employment with the

USUHS, and report to CHR before and following travel outside of the U.S. for any purpose.

b. Provide CHR with information concerning immediate family members traveling with them outside of the U.S. or joining them later in the U.S.

c. Comply with all requirements for payment of Federal and State income taxes and filing of tax returns.

d. Immediately advise the CHR staff and their immediate supervisor upon change in their status or change in the status of a family member (e.g., return to the home country or change in visa status from J-2 or H-4).

e. Advise CHR when their address or telephone number changes.

6. Non-Citizens who are permanent residents (green card holders) shall:

a. Report to CHR before reporting to the office where they will work when they begin employment with the USUHS.

b. Comply with all requirements for payment of Social Security Taxes (FICA), Federal and State income taxes and filing of tax returns.

c. Provide CHR with documentation of their permanent resident status.

G. Procedures. See Enclosure 5.



Charles L. Rice, M.D.
President

Enclosures:

1. References
2. Definitions
3. Documentation Required for Approval to Petition for H-1B Visa
4. Certification of Recruitment Efforts
5. Procedures

REFERENCES

- (a) USUHS Instruction 1400, "Employment of Non-citizens," dated September 30, 1993 (hereby cancelled)
- (b) 8 Code of Federal Regulations, Part 214, "Nonimmigrant Classes"
- (c) 22 Code of Federal Regulations, Part 514, "Exchange Visitor Program"
- (d) 20 Code of Federal Regulations, Part 655, "Temporary Employment of Aliens in the United States"
- (e) 5 Code of Federal Regulations, Part 7, "General Provisions (Rule VIII)"
- (f) 5 Code of Federal Regulations, Part 213.3106(e)(1) and 213.3106(e)(2), "Excepted Service"
- (g) DoD Appropriations Act, 1996, Public Law 104-61, 1995 HR 2126, dated December 1, 1995
- (h) USUHS Instruction 1417, "Guidelines for Completion and Use of Request for Personnel Action (SF-52)", dated May 25, 1993
- (i) Internal Revenue Service Publication 519, "United States Tax Guide for Aliens"

DEFINITIONS

1. Certificate of Eligibility For Exchange Visitor (J-1) Status (IAP-66) - A controlled document of the USIA, issued to the Exchange Visitor by the sponsoring agency (USUHS), allowing him/her entry to the U.S. as a participant in a cultural exchange program.
2. Exchange Visitor's Government - The government of the country of the exchange visitor's nationality, Passport of Record, or where the exchange visitor has a legal, permanent residence to which he/she is entitled to return.
3. Financed Directly - Financed, in whole or in part, by the U.S. Government or by the exchange visitor's government, with funds contributed directly to the exchange visitor in connection with his/her participation in an exchange visitor program.
4. Financed Indirectly - Financed by an international organization, with funds contributed by either the U.S. or by the exchange visitor's government, for use in financing international educational and cultural exchanges, or financed by an organization or institution, with funds made available by either the U.S. or the exchange visitor's government for the purpose of furthering international educational and cultural exchange.
5. H-1B Visa (Temporary Professional Worker) - A visa for an alien having a residence in a foreign country which he/she has no intention of abandoning, who is coming to the U.S. to work temporarily in a specialty occupation or research effort.
6. H-4 Visa - A visa issued to the immediate family of an H-1B visa holder. The USUHS processes the paperwork for these visas for the spouses of H-1B visa holders and any children who are under the age of 22. These visas are renewed concurrently with the sponsor's H-1B visa.
7. Immigrant Visa (Green Card) - A permanent resident visa that permits the alien to remain and work in the U.S. indefinitely.
8. J-1 Visa (Exchange Visitor) - A non-immigrant visa for an alien having a primary residence in a foreign country which he/she has no intention of abandoning, who is a bona fide scholar, trainee, teacher, professor, student, research assistant, specialist, or a leader in a field of specialized knowledge who is coming to the U.S. as a participant in a program designated by the Secretary of State for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training. The J-1 visa is authorized for foreigners participating in the Department of State's Exchange Visitor Program. This program was established to provide foreigners with opportunities to participate in educational and cultural programs in the U.S. and to return home to share the experiences and knowledge gained.
9. J-2 Visa - A non-immigrant visa issued to the immediate family of a J-1 visa holder. The USUHS shall process the paperwork for J-2 visas for the spouses of J-1 visa holders and their children who are under the age of 22. These visas are renewed concurrently with the sponsor's J-1 visa.

10. Labor Condition Application - An application that employers must file with the Department of Labor prior to the filing of both new H-1B petitions and applications for extensions of H-1B status. This form certifies the information regarding the salary to be paid to the H-1B worker; that the proposed employment will not adversely affect the working conditions of workers similarly employed; that at the time of filing there is no strike, lockout, or work stoppage; and, that the employer has provided notice of the filing of the application.

11. Non-immigrant Visa - Issued for a variety of reasons to a foreigner who has no intention of abandoning his/her residence in a foreign country and who is studying or working in the U.S. for a specified period of time.

12. Specialty Occupation - An occupation which requires theoretical and practical application of a body of highly specialized knowledge, as well as attainment of a bachelor's or higher degree in the specific specialty or its equivalent.

13. Two-Year Residency Requirement - Requirement that persons admitted to the U.S. under a J-1 Visa Exchange Program, and whose participation in the program was financed in whole or in part, directly or indirectly, by an agency of the U.S. Government or the government of the country of the participants' nationality or last legal residency, must be physically present in their country of nationality for an aggregate of at least two years following departure from the U.S.

14. Visa - A stamp issued by a U.S. consular official which allows a non-citizen to enter the U.S.

15. Visa Stamp - A stamp made in the passport of a non-citizen by a U.S. consular official that authorizes entry into the U.S. on a particular type of visa.

DOCUMENTATION REQUIRED FOR APPROVAL TO PETITION FOR H-1B VISA

Requests for H-1B visas will be in memorandum format and signed by the Chair of the Department in the SOM or GSN or by the individual designated by the DEN; DSN; or Directors of Institutes. This request must clearly address the unique knowledge and skills of the individual for whom the H-1B visa petition will be made and how the knowledge, skills, and/or the individual's collaborative work will support the work of the Department and contribute to the teaching and/or research programs of the USUHS. The memorandum and other information must be submitted to the appropriate Dean or Director through the Director, CHR and must include:

1. A discussion of the proposed employee's technical and professional background as it relates to the work for which employment is proposed. This discussion should emphasize the aspects of the proposed employee's education and experience that makes him/her uniquely qualified for the work to be done.

2. A discussion of any recruitment activities conducted to fill the position(s), including the methods of recruitment, areas of consideration/search, and the number and quality of candidates

who respond to the recruitment. In addition, the request should include a clear statement outlining why a U.S. citizen is unavailable to fill the position.

3. A discussion on how the knowledge and skills of the proposed employee and/or the collaborative work he/she will do will support the Department/Office and contribute to the teaching and/or research programs of the USUHS.

4. A discussion of the connection between the project that the proposed employee will work on and its benefit to DoD, if any.

5. The position title and salary of the proposed employee.

6. A current CV, including a bibliography and grant source and amount of the award for the proposed employee.

7. A list of the specific contributions the individual will make to the USUHS's educational and research missions over the next five years.

8. A completed USUHS Form 1325.

Attachments:

- A. USUHS Form 1325a
- B. USUHS Form 1325b

Enclosure 3
Attachment A

Proposal for Admitting an International Student/Scholar to the School of Medicine (SOM) or Graduate School of Nursing (GSN), USUHS

*****Please complete items 1 through 5 ONLY*****

Submission date: _____ Date(s) of attendance: _____

1. Name of student/scholar: _____

2. Nationality: _____

3. Proposed position at USUHS/AFRRI: _____

4. Sponsor (Department of Activity): _____ POC: _____
Date: _____ Department Chair Signature: _____
Funding Source (USUHS, Grant): _____

5. Applicable international program/authority:

☐ FMS ☐ IMET ☐ ESEP

☐ DoD/USUHS MOU (Title 10) with: _____

ECA/EC (exchange visitor category). Please mark one of the following:

☐ J-1 Visa (USUHS sponsored) ☐ H1-B Visa (Jackson Foundation sponsored)

☐ J-1 Visa (Jackson Foundation sponsored) ☐ H1-B Visa (USUHS sponsored)

☐ Other – please explain

☐ 6. Approval/Review by Vice President for Affiliations and International Affairs (AIA) (A1050A)
Date: _____ Signature: _____

☐ 7. Coordination with/approval by Director, Security, USUHS (UP001)
Date: _____ Signature: _____

☐ 8. If/as appropriate: Coordination with/approval by Civilian Human Resource Directorate (A1023)
Date: _____ Signature: _____

☐ 9. Coordination with SATFA through Manpower Analyst, Financial and Manpower Management Division, USUHS for FMS, IMET, or other programs involving fund transfers (A1040B)
Date: _____ Signature: _____

☐ 10. Coordination with University Brigade (for military students/scholars) (C1039)
Date: _____ Signature: _____

☐ 11. Please return original copy to the Office of Affiliations and International Affairs, A1050. Ensure that all steps outlined are completed.

USUHS Form 1325A (AIA) (03/2006)

USUHS Instruction 1400, 12/2009

MEMORANDUM FOR THE VICE PRESIDENT FOR AFFILIATIONS AND INTERNATIONAL AFFAIRS (AIA)

SUBJECT: Proposal for a new School of Medicine (SOM) or Graduate School of Nursing (GSN), USUHS, International Research Collaboration or Educational Program

1. Briefly describe the Program or Research Collaboration. (Attach a *brief one-page* summary that addresses all issues regarding the collaboration. This summary should include a short discussion about the research/program, list names and addresses of all involved institutions, list all involved parties and their affiliations, identify if the collaborator/institution is a government or private entity, identify if there will be any exchange of personnel and/or data/samples, and address funding (grant, department, or other).

2. Program sponsors:

Department Chair signature: _____ Date: _____

POC/PI: _____ Telephone/Email: _____

3. Date received by the Office of the Vice President for Affiliations and International Affairs (AIA) (A1050):

4. CONCURRENCES/COMMENTS:

a. Vice President for Research (VPA) Preliminary Review/Approval: _____ Date: _____

b. Office of the Vice President for Affiliations and International Affairs (AIA) Review/Comments: _____ Date: _____

c. USUHS General Counsel (OGC) Review/Comments: _____ Date: _____

5. APPROVAL

a. By President, USUHS: _____ Date: _____

b. OASD/HA notified by: _____ Date: _____

c. If required, request for approval sent to OASD/HA on: _____ Date: _____

OASD/HA received approval on: _____ Date: _____
Name/title of authorizing official: _____

Please return the completed form to AIA, Room A1050, for filing or further action.

USUHS Form 1325B (AIA) 03/2006

Certification of Recruitment Efforts

Selectee's Name: _____

Country of Citizenship: _____

Current Visa Status (Include date of initial issuance and all reissuances):

List all sponsors for any visa status:

Description of Recruitment Efforts/Sources:

Discussion of unique abilities, knowledge, skills of selectee:

Discussion of deficiencies of U.S. citizens considered:

Department Chair/Activity Head

Date

PROCEDURES

1. Visa Program Requirements and Time Limitations.

a. J-1 (Exchange Visitor) Visas

(1) The USUHS J-1 Visa Program was approved to provide opportunities for research in the clinical and basic sciences for specially selected and highly qualified research scholars conducting studies in advanced scientific methodology. This Program will also allow the USUHS to accept foreign civilian and military students into the medical school to promote the general interests of international exchange.

(2) The periods of stay in the U.S. authorized under the USUHS J-1 Visa Program are:

(a) Teachers, professors, research scholars, and specialists - an initial period of three years plus an additional six month extension at the discretion of the program sponsor (USUHS) and a possible additional 30 month extension if approved by USIA (maximum period, with extensions, is six years).

(b) Students - may remain as long as they pursue substantial scholastic programs leading to recognized degrees or certificates plus a period of up to 18 months after the degree or certificate is received, if the program sponsor (USUHS) recommends a period of practical training.

(c) Requests for extension beyond the initial period of stay for teachers, professors, research scholars, and specialists as discussed in 1.a.(2)(a) must be approved on a case-by case basis by the USIA. Requests for extension must be made in writing and must outline the extenuating circumstances that warrant the extension. USUHS supervisors and managers who wish

to extend the stay of J-1 visitors must forward a written request for an extension to CHR along with a letter from the employee stating his/her future intentions upon the expiration of the extension period. The request and the employee letter must be submitted to CHR at least four months prior to the completion of the three year stay.

b. H-1B Temporary Worker Visas

(1) The USUHS may petition Immigration and Naturalization Services for an H-1B visa for prospective employees who are in a professional occupational field on the basis that the work requires a professional employee and that the non-citizen has:

(a) A U.S. baccalaureate or higher degree.

(b) A Foreign baccalaureate or higher degree.

(c) Education, training, and experience equivalent to a baccalaureate degree.

(2) If the individual for whom an H-1B visa is requested is an exchange visitor, on a J-1 visa, and has been financed directly or indirectly, by the U.S. government, a waiver of the two-year residency requirement must be approved before the petition for the H-1B visa may be made. The waiver request must have DoD, USIA, and USCIS approval. *Enclosure 3* outlines the information needed to request the approval of the DEN for the H-1B petition and the approval of the waiver by the agencies listed above. This process may take up to six months. Therefore, CHR should be notified of the intent to employ an individual in this category as early as possible.

(3) All petitions for initial H-1B visas and for extensions of existing H-1B visas must be accompanied by a Labor Condition Application Form that has been approved by the Department of Labor. This form certifies that the H-1B visa holder will be "... paid the actual wage rate paid to workers similarly employed at the place of employment, or the prevailing wage level for the occupational classification in the area of intended employment."

(4) USUHS employees covered by H-1B visas may stay in the U.S. for a period of five years; a sixth year may be granted in extraordinary circumstances, but the request must be approved by the DEN before the petition to USCIS for the sixth year extension will be prepared by CHR.

c. H-1B and J-1 visas are generally issued for a one-year period and may be renewed at the request of the supervisor or manager up to the maximums described above. Both H-1B and J-1 visas can be issued for multiple years at the request of the supervisor or manager. If a multiple year visa is requested, the supervisor must confirm that funding is available for the time period requested. No review or approval by the USCIS is required for extensions of J-1 visas for the first three years. USCIS approval is required for all extensions of H-1B and J-1 visas beyond the initial three years.

2. Requests for Visa Petitions.

a. USUHS supervisors and managers must request all initial visas and extensions of visas in writing. In the case of initial visas, final offers of employment will be made and reporting dates established only after all appointment requirements,

including security clearances in coordination with the USUHS Security Office, and visa approvals have been completed. Final employment offers and reporting dates will be confirmed by or coordinated with the Civilian Employment Division of CHR.

b. A complete package to request the employment of a non-citizen will include:

(1) A properly completed and approved Request for Personnel Action (SF-52).

(2) The candidate's completed Curriculum Vitae (CV) including bibliography and grant source and amount of grant funding.

(3) Information on all immediate family members who will accompany the employee to the U.S.

(4) Information on the prospective employee's previous visa(s), if any, and if the prospective employee is currently in the U.S., his/her current visa status.

(5) A completed USUHS Form 1325.

c. In addition to the above, requests for H-1B visas must include the information outlined in *Enclosure 3* if the employee is or has been on a J-1 visa and is subject to the two-year residency requirement.

3. Eligibility for Benefits.

a. Employees or students who hold H-1B or J-1 visas or who have immigrant status (green card holders) and who are appointed for more than one year are eligible for Federal health and life insurance coverage.

b. Employees with H-1B or J-1 visas are not eligible for coverage under the Civil Service Retirement System (CSRS), Federal Employees Retirement System (FERS) or

USUHS Faculty retirement programs. Employees with immigrant status (green card holders) are eligible for FERS or USUHS Faculty retirement coverage as appropriate.

c. Employees who have temporary appointments and who hold H-1B or J-1 visas or green cards are eligible for Federal Health Benefits upon completion of one year of continuous Federal service. All costs for this coverage are borne by the employee.

4. Tax Status of Visa Holders.

a. Non-citizens on H-1B or J-1 visas are subject to Federal income taxes unless they are citizens of countries that have current tax treaties with the U.S.

b. Employees with H-1B or J-1 visas or green cards are subject to state income taxes.

c. Employees with H-1B or J-1 visas are not subject to Social Security (FICA) taxes.

d. Employees who have immigrant status (green card holders) are subject to Social Security (FICA) taxes.

e. Employees are subject to Federal income tax if:

(1) Their stay in the U.S. has exceeded the tax exempt period established through a tax treaty between their country of origin and the U.S.

(2) Their country of origin has no tax exempt treaty with the U.S.

(3) They are resident aliens at any time during a calendar year. A resident alien for purposes of Federal income tax liability is a non-citizen who:

(a) Is a lawful permanent resident (has been given the privilege of residing permanently in the U.S. as an immigrant). Generally, this status is given through issuance of a "green card," or

(b) Meets the substantial presence test for the calendar year. Internal Revenue Service Publication 519¹ outlines the criteria for determining whether an individual meets this test.