State of California
Memorandum

To: Phil Bailey, Dave Christy, Linda Halisky, Thomas Jones, Debra Larson, Michael Miller, Cornel Morton, Don Oberhelman, David Wehner
Date: November 21, 2011
File: V:\AA\Visa

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Subject: Employment of Non-Immigrants

Federal regulations mandated by the United States Department of State and the Department of Homeland Security pose restrictions on employment of non-immigrant workers. State of California regulations and Worker’s Compensation regulations also mandate that all employees be legally able to work in the United States and complete employment documentation before beginning work assignments.

A non-immigrant may come to Cal Poly on a temporary basis to engage in research, teach, or pursue some professional objective upon receiving a written invitation from the dean. The Employment Equity Office (6-6770) will assist the dean in determining which visa category or immigration status is most appropriate.

The following definitions may be helpful:

- **Alien** - Any person not a citizen or national of the United States.

- **Immigrants** - Aliens lawfully granted U.S. permanent residence (green card status). Immigrants can remain indefinitely (although the “green card” is only valid for a maximum of 10 years at a time), retaining their foreign nationality, or they can apply for citizenship through naturalization.

- **Non-immigrants** - Aliens having temporary admission to the United States for specified purposes such as teaching or research, normally documented by a visa status issued by the U.S. Citizenship and Immigration Services. Non-immigrants are required to leave the United States when the purpose of their temporary stay has been accomplished or when the visa status expires, unless they have begun the petition process for immigrant status. Positions in this category are general Lecturers or Tenure/Tenure-Track Faculty with H-1B visas.

- **DS-2019 Form** – This form is created by International Education & Programs via the Student and Exchange Visitor Information System (SEVIS.) The Exchange Visitor uses this form to apply for the J-1 visa status for temporary visit under the Research Scholar/Professor, Short-Term Scholar, Student, or Student Intern categories.

- **I-20 Form** – This form is created by International Education and Programs via SEVIS and provided to degree-seeking students admitted to Cal Poly. Students use the form to apply for an F-1 visa.

- **I-94 Arrival/Departure Record**- 3”x4” white card issued to the non-immigrant upon arrival by U.S. Customs and Border Protection (USCBP) – usually stapled inside passport. It is marked with the date and place of entry, the alien’s visa status, a unique 11-digit admission number, and a departure date or a period of admission known as “duration of status,” indicated by the notation of “D/S.”
Process to Invite a Tenure-Track or Temporary Faculty Member (H-1B or TN Visa Type)

1. Consult with the Employment Equity office prior to the decision to offer a position to a non-immigrant.

2. Once the applicant accepts the offer, the Employment Equity office will initiate completion and processing of forms and documentation required for the visa. (Normally takes 3-6 months before the start of the appointment unless premium processing is utilized at an additional cost to the college/department of $1,225. The college is also responsible for two fees related to the H-1B visa: $325 for the application fee and a $500 anti-fraud fee.)

3. A Faculty Mentor should be appointed as a liaison with the non-immigrant employee to provide personal assistance such as locating housing, providing information about the campus, local community and any appropriate information or assistance.

4. The College/Department should assign the non-immigrant only those functions and responsibilities that are consistent with the appointment and authorized by the U.S. Citizenship and Immigration Service (USCIS).

5. Ensure that no prospective employees begin performing services until they have obtained all necessary government approvals to be employed at the University, such as the DS-2019 form from International Education & Programs if J-1, Department of State (DOS) approval and USCIS approval if H-1B from Employment Equity, a valid passport and visa, current I-94, I-9 form and payroll documentation and, if applicable, a social security card. In addition, departments and colleges employing non-immigrants must ensure that the degree requirements have been met prior to the beginning date of the non-immigrant’s appointment. If the required degree listed in the advertisement has not been conferred prior to the anticipated date of employment, the non-immigrant cannot begin working for Cal Poly, even in a lecturer capacity.

6. Ensure that non-immigrant employees have adequate health insurance coverage for themselves and for any visa dependents they have in the United States.

7. Provide non-immigrant employees with adequate office and/or laboratory facilities, including desk space, access to telephone services, and access to department and Cal Poly facilities.

8. Based on the type of Non-Immigrant Visa, notify either the Employment Equity Office or the International Education & Programs Office when a non-immigrant employee terminates a program and/or leaves Cal Poly.

Any questions concerning this information should be directed to Sumi Seacat, ext. 6-7387.

Process to Invite a J-1 Scholar (Visiting scholar, researcher, instructor) or Student Intern for a temporary assignment

1. Contact the IEP office to confirm the visitor qualifies for a J-1 visa.

2. Visit the International Education and Programs (IEP) website: http://www.iep.calpoly.edu/content/intl_scholars/info_depts. Follow the instructions and complete forms found there. Be sure to send appropriate forms to Academic Personnel and Human Resources. Paid appointments must be approved by Academic Personnel.

3. Once the appointment of the Exchange Visitor (EV) is approved by the Dean’s office (and AP if appropriate), provide IEP with e-mail contact information for the EV so IEP can provide visa application instructions and collect needed information from the EV.
4. Assign a faculty mentor to assist the EV and ask the mentor to complete and return the Mentor Agreement at least four months prior to the employment start date.

5. IEP creates DS-2019 based on the information provided in the offer letter regarding the employment dates, salary, and job description. IEP sends the DS-2019 to department or Dean's office to send to EV.

6. EV applies for J-1 visa at a U.S. Consulate or Embassy usually in their home country.

7. EV may enter the U.S. up to 30 days prior to the DS-2019 program begin date.

8. EV is required to check in at IEP office with documents and address within 30 days of the DS-2019 program begin date.

Any questions about this information should be directed to Judy Mitchell, ext. 6-5837.

Additional Employment/Compensation of Non-Immigrant Faculty Working on Grants/Sponsored Projects, Contracts, Sports Camps, or projects funded through discretionary funds

The Cal Poly Corporation cannot sponsor faculty for H1-B visas and therefore cannot employ those faculty or compensate them for work on grants, contracts, camps or any other additional employment funded through external funding (i.e. gifts/discretionary/special activity accounts/camps/workshops/short courses/etc. of funds held by either the Cal Poly Corporation or Cal Poly Foundation) while they are in a visa status. Since Cal Poly sponsors the non-immigrant in the visa classification appropriate to their employment as a faculty member, any additional compensation for work performed by non-immigrants (H1-B or TN visa status) funded by external sources must be made by the sponsoring agency (Cal Poly) through the employing department, rather than by the Cal Poly Corporation, with the employing department receiving reimbursement from the grant, contract or other program administered by the CPC.

All sources of employment and compensation taken together cannot exceed 125% FTE, regardless of the classification used to compensate or source of compensation. For the past several years, non-immigrant faculty on visas receiving additional compensation for work on grants and contracts were employed in the Casual Worker classification as a casual hourly non-exempt employee (similar to the casual employment classification used by the CPC for all other faculty working on grants and contracts). However, the non-exempt Casual Worker classification limited the periods during which hours could be charged to grants to academic breaks, summer, and holidays, which resulted in delayed compensation to the faculty whose work on the grant or contract was performed throughout the academic year. This limitation also resulted in an inability to represent an accurate accounting of their work being performed on the project and Sponsored Programs was unable to invoice the sponsor for the faculty effort when the work is actually performed. Also complicating the situation is the fact that most sponsors will only approve an hourly rate equivalent to a faculty member’s actual faculty rate, further delaying actual payment for work performed by the employee.

These issues have prompted a recent change in the way non-immigrants will be appointed for any additional employment. Departments who employ non-immigrant faculty on visas will now use the Special Consultant classification (job code 4660) for the purpose of compensating these faculty for work on grants and contracts, and any other additional employment. It should be noted that since the Special Consultant is an exempt classification, faculty employed as Special Consultants must be compensated for the work in full day increments. During the academic term, faculty employed as Special Consultants are permitted to work one day per week or four days per month to stay within the 25% additional compensation provisions. During academic holidays and breaks, Special Consultant assignments may be performed on a full-time basis.

It is our expectation that the Special Consultant classification will allow faculty to work on their grants and contracts without undue restrictions on their time and enable them to be paid in a timely manner, facilitate better management of budgets, and allow the projects/programs to be invoiced correctly.
The procedures, appointment templates, and forms for processing Special Consultant appointments for faculty on visas are available on the Academic Personnel website: [www.academic-personnel.calpoly.edu/content/BPGuides](http://www.academic-personnel.calpoly.edu/content/BPGuides). Questions regarding this information may be directed to Carolyn Johnson (6-6570). Questions regarding processing of Special Consultant appointments may be directed to Carol Sammons (6-5228) or Jennifer Myers (6-6569).

**Student Employment**

F-1 and J-1 students can be employed on campus up to 20 hours per week during the quarter and full-time between quarters and during the summer.

F-1 and J-1 students may be eligible for a period of practical or academic training usually done after completion of their studies. Cal Poly can employ students from other campuses with this type of authorization. Contact Judy Mitchell at ext. 6-5837 to discuss a student's eligibility.

**Employment Eligibility for Other Non-Immigrant Visa Holders and Dependents**

Please refer to an on-line reference from the NAFSA Advisor’s Manual for information about nonimmigrant categories and employment eligibility:


If you have any questions please contact Judy Mitchell, ext. 6-5837.

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