HIRING FOREIGN NATIONALS: What to Know, Whom to Contact, What to Do

As the United States Citizenship and Immigration Service (USCIS) notes on their website, Immigration Direct (http://www.immigrationdirect.com/us-visas.jsp): “Applying for a visa can seem long and complicated. Having the right documents is essential. If you do not have the required documents with you, your visa application is likely to be rejected...”

FACT: There are currently more than 80 types of visas in the United States.

INTRODUCTION:
So what is a visa?
A visa is an official authorization appended to a passport, permitting entry into and travel within a particular country or region. This endorsement signifies that the document is in order and permits its bearer to travel into or through the country of the government issuing it. Visas are alphabetically coded, and each alpha character denotes a different type of visa, each with its own qualifiers and restrictions.

And why is this important to me?
As UM reaches toward the goal of building a university for the global century, our applicant pools are becoming more diverse and our sourcing is generating more candidates. For many years, UM has been attracting significant talent from around the globe and the trend is expected to increase. Hiring foreign nationals is complex, as the following pages will illustrate. Whether hiring post-docs, researchers, tenure-track faculty, staff or contract professionals, we must ensure that our hiring practices are in compliance and that we are taking the right actions on behalf of our potential new employees.

Wading through the complexities of hiring foreign nationals can be easier with the following guidelines:

BEFORE YOU BEGIN A SEARCH:
• Understand that in the event a foreign national is hired, the hiring department is responsible for contacting Shelley Hiniker, Associate Director of Human Resources and UM Foreign National Specialist at 406-243-6634 to initiate required processes and documentation.

AS YOU BEGIN A SEARCH:
• Think Diversity!
• Ensure that you are advertising widely, and according to the following guidelines:
  o One online posting for 30 days in a national source publication. This requirement is met when the UM Recruitment office posts the position to InsideHigherEd.com and HigherEdJobs.com at no cost to the department. These two sites also meet the requirement for consistency in posting.
  o Posting on the UM website for a minimum of 30 days.
Posting at the local **Job Service** for a minimum of **30 days**.

- Regardless of the type of position you are posting, *(i.e. faculty, staff, student, temporary, contract professional, postdoc)* any search may yield a successful foreign national candidate.
- Don’t hesitate to ask for assistance from HRS to ensure that recruitment practices and sources for job announcements conform to existing Department of Labor (DOL) regulations.
- Among the many questions you are **not** allowed to ask an applicant **during** the recruitment are these:
  - Are you a U.S. citizen?
  - What visa do you currently hold?
  - What is your nationality?

**AS YOU EXTEND AN OFFER:**

- Ask if the candidate is eligible to work in the United States in the specific position which the candidate is being offered, and if not now, ask if the candidate would be eligible by the time the candidate is to report to work. *This will initiate the discussion about whether the candidate is a foreign national.*

- Upon hiring a foreign national, please keep the following in mind:
  - The most common visas to the United States are travel visa B-2, student visa F-1, and work visas H-1B and L-1.
  - Foreign nationals may have one of many possible visas that allows entry and a stay in the United States, such as the J-1 student visa, or an F1, which may not make the holder eligible to work in certain positions based on the specific visa restrictions.
  - For certain positions, there is a considerable period of negotiation before a candidate accepts or declines an offer, so it is important not to let the eligibility issue (for a visa) slip through the cracks.
  - There are specific time limits for filing paperwork and they are dependent on several factors. Therefore, the Foreign National Specialist should be contacted as soon as possible to meet filing deadlines.
  - The type of position may dictate what needs to be done to obtain a visa or if a visa should be renewed.
  - Whether it be for post-doctoral appointments, professional contracts, tenure-track faculty members or any other position—**please note: the positions are not ‘permanent’ in the eyes of the U.S. Citizenship and Immigration Service (USCIS).** *A visa allows a temporary stay in the United States.* *Note: For tenure-track hiring, an H-1B visa is a temporary visa which allows time to obtain permanent residency.*
  - The Foreign National Specialist (Shelley Hiniker) should be contacted (243-6634) to determine eligibility and initiate the process for obtaining the correct visa.
HRS Recruitment should be contacted (243-5706/243-5707) so this office is aware of the potential offer and can note the search files appropriately.

For new hires wishing to remain at UM, there are generally three basic steps:
1. Obtain a prevailing wage determination (if needed)
2. Obtain labor certification from the Department of Labor (DOL)
3. Obtain the H-1B work visa/O-1 extraordinary ability visa/EB-3 specialty occupations visa, or other appropriate visa (determined by consulting with Shelley Hiniker)

Please remember: The process begins when the recruitment staff notifies the Foreign National Specialist that there is a pending hire (an offer of employment has been made) involving a foreign national.

PREVAILING WAGE:
- The Department of Labor requires a prevailing wage determination for all positions not covered by a collective bargaining unit (H-1B, EB-3 and O-1 visas only).
- The prevailing wage determination ascertains that a particular position is not being underpaid or overpaid.
- Postdoctoral positions, research scientists and adjuncts are usually in this category.
- Occasionally, if a position has unique attributes, it may be beneficial to undergo the prevailing wage process. Please speak to the Foreign National Specialist if this may be the case.
- The determination is electronically filed and conducted at the federal Department of Labor level (not at the state level), and could take approximately 6 to 8 weeks or longer.
- A prevailing wage determination remains valid for a limited time period, depending on the date documentation is submitted.

Note: A prevailing wage determination is always conducted before a labor certification, if required. UM processing of the documents to be submitted can take between 5 and 7 business days. Please plan accordingly.

LABOR CERTIFICATION:
- A labor certification is required for every professional visa classification whether covered by a collective bargaining unit or not.
- The labor certification is electronically filed and conducted at the national Department of Labor (not at the state level) and could take approximately 2 to 6 weeks or longer.
- The labor certification must be processed in order to apply to the USCIS for a visa.

H-1B VISA APPLICATIONS: (Information is provided on H-1B because these are the most prevalent at UM)
- H-1B visas apply to foreign professionals who are sponsored by the U.S. employer to work in a specialty occupation (occupations requiring theoretical and practical
application of a body of specialized knowledge along with at least a Bachelor’s degree or its equivalent) in the United States.

- An H-1B visa is generally valid for three years and can be extended for an additional 3-year period. The total time period can generally not exceed six years.

- **In order to qualify for an H-1B visa:**
  - The applicant must hold at least a Bachelor’s degree and the U.S. position must require at least a Bachelor’s degree.
  - The U.S. employer must agree to pay the H-1B employee at least the prevailing wage earned by similarly employed workers in the area of employment and must make other attestations as stipulated by the Department of Labor. *(See previous section on Prevailing Wage for additional information.)*
  - Individuals seeking a U.S. work visa who do not qualify for H-1B status should explore alternate visa options, such as the O-1, or TN visa. *Please consult with the Foreign National Specialist.*
  - Although there is no cap on the number of H-1B visas for university employers, **application for a visa is not a guarantee that one will be given.**
  - The H-1B application process is complicated not only from a timing perspective, but also because a number of forms are required, and applications must be filed with both U.S. Citizenship & Immigration Services and the Department of Labor.
  - A foreign national candidate who is out of the country must make an appointment with the US Consulate or Embassy prior to arriving in the U.S. to update (or apply for) the visa insertion into their passport. The appointment cannot be made at the Consulate or Embassy until after the H-1B approval has been received.
  - Once an H-1B application is submitted to USCIS, the processing will take approximately 4 to 5 months.

**FEES:**
- For a new H-1B visa:
  - Application fee is $325.00
  - Security fee is $500.00 for non-renewing H1B application
  - Flat fee for beneficiaries (spouse or children) is $275.00
  - Expedited process request (recommended*) is $1225.00

  *NOTE: the expedited process fee is recommended since it significantly shortens the normal processing time of 4 to 5 months down to approximately 15 business days (after submission to USCIS). Requests for Additional Evidence (RFES) can add to the time periods. Please be advised that the U.S. Department of Labor requires an analysis prior to submission, which can take up to 4 weeks.

- The University of Montana is the “owner” or petitioner for the visa, and the foreign national is the “beneficiary.”
• An H-1B visa is **NOT transferable** either into or out of The University of Montana. The H-1B visa is **place**, **employer** and **income** specific. Thus, if there are any modifications to place, employer or income, the Foreign National Specialist must be notified immediately to determine if an amendment to the application is necessary.

• The University department or unit employing the foreign national is required to pay for processing the application and to pay all costs associated with the application process, including, if required, conducting a “new” search according to labor certification requirements and directives.

• Departments or units are responsible for the cost of returning a non-immigrant employee (including spouse and children) to the employee’s homeland if the employee is terminated, the work ends or the visa expires during their employment period and renewal is not desired. There is a 10-day grace period before the foreign national is **required** to leave the country.

• **BY LAW**, the above listed fees **cannot** be paid by the beneficiary, nor can the beneficiary be asked or required to repay the department.

**DEPARTMENT/UNIT RESPONSIBILITIES:**

• The hiring authority of the department must provide the following (copies are acceptable):
  1. Letter of Offer to hire or extension of current position on departmental letterhead, addressing:
     • Position description
     • Rate of pay
     • Union or non-union affiliation
     • Duration of employment
     • Scope of position requirements
  2. Non-technical job description
  3. Index number for application fees and all mailing costs

• If a competitive search takes place, the department must remember to retain all of the following documents in the recruitment files:
  1. Total applicant list
  2. Names and departments of search committee members
  3. Selection criteria
  4. Final list of interviewed applicants
  5. Justification for selection of applicants and final candidate, along with brief reasons for non-selection of all others
  6. All data and information pertaining to the job offer

*It is recommended that the documents listed above be retained for a minimum of five (5) years by the hiring department and the Recruitment Office.*
BENEFICIARY RESPONSIBILITIES:

- Copies of the following ORIGINAL documents must be provided:*
  
  *Important Note: If the original documents are in a foreign language, the original documents in the foreign language must be submitted, along with copies that have been translated into English.

  - Current passport and visa
    - If an F visa, an I-20 form must also be submitted
    - If a J visa, a DS-2019 form must also be submitted
  - Current CV (resume’)
  - Academic credentials and transcripts of each credential (Bachelor’s degree and higher)
  - Home country contact address and telephone number (if outside the U.S.)
  - Contact address and telephone number (within the U.S.)
  - Social Security number
    - If the beneficiary does not have a Social Security number, application materials may be requested from the Foreign National Specialist
  - Nearest U.S. Consulate or Embassy address and telephone number (if beneficiary is outside the U.S.)
  - Birthplace, country and date documentation

ADDITIONAL PROCESS NOTES:

- Upon USCIS approval of the H1B visa, the Foreign National Specialist will contact both the department/unit and the beneficiary. The original document will be forwarded to the beneficiary to include in the paperwork necessary for the appointment with the consulate.
- If the H1B visa is not approved, the Foreign National Specialist will contact the beneficiary and the department to discuss next steps.
- Upon the candidate’s arrival at the University, both the beneficiary and the departmental contact shall make an appointment to meet with the Foreign National Specialist.

IMPORTANT: Because rules and processes change continuously, we strongly recommend that you consult with Shelley Hiniker, Foreign National Specialist in Human Resource Services, regarding any and all aspects of this process.

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