Faculty Visas

Audit Report # 13-04
February 21, 2013

Office of Auditing and Consulting Services

"Committed to Service, Independence and Quality"
February 21, 2013

Dr. Diana Natalicio, President
The University of Texas at El Paso
Administration Building, Room 500
El Paso, Texas 79968

Dear Dr. Natalicio:

The Office of Auditing and Consulting Services has completed a limited scope audit of the Faculty Visas processes. The objective of this audit was to determine whether procedures for the employment of international faculty at the University of Texas at El Paso are in compliance with applicable laws and policies.

We appreciate the cooperation and assistance provided by both Human Resources Services and the Office of International Programs throughout our review.

Sincerely,

William A. Peters, CPA, CIA
Director
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EXECUTIVE SUMMARY

The Office of Auditing and Consulting Services has completed a limited scope audit of the Faculty Visas process. The audit scope was limited to the examination of the immigration documentation for foreign faculty members on file with Human Resources Services and the Office of International Programs as of September 1, 2012.

The objective of this audit was to determine whether procedures followed for the employment of international faculty at the University are in compliance with applicable laws, regulations and University policies. As a J Visa sponsor, The University of Texas at El Paso is required to report certain information about international visitors and faculty in the Student and Exchange Visitor Information System database, a web-accessible database used by the Department of Homeland Security. Reporting requirements are established by federal law and vary according to visa type. Our audit resulted in the following findings:

- I-9 forms were processed for two J-1 Visa holders sponsored by other institutions. As a result, one of the two was paid as an employee instead of an independent contractor as required by law.

- Two tenure track employees have visas that do not correspond to their permanent tenure track position status.
BACKGROUND

Employment of Non-Citizens
International non-residents may be employed at the University of Texas at El Paso (UTEP) provided they have been issued the appropriate visa and work permit by the federal government. Before any commitment is made to a non-citizen applicant who is under consideration for a faculty or staff position, he/she must be referred to Human Resource Services (HRS) for a determination of visa status and eligibility for employment.

To expedite the visa process and reduce cost for the University, HRS hired an Immigration Services Manager in 2009. The Manager provides support for in-house immigration functions, including facilitation of the process for both internal foreign nationals and foreign national candidates.

The following types of immigration visas issued by the United States Citizen and Immigration Services (USCIS) authorize the employment of a foreign faculty member:

- **J-1 visa**: J1 visas are used for faculty and scholars who will be engaged in teaching and/or research. Research Scholars and Faculty may stay in the USA for a maximum of five years. Short-term Scholars may stay for up to six months. Visitors may be subject to a two year home residency requirement which could impact their visa status. This status cannot be used for tenure-track positions.

- **H-1B visa**: H-1B visas are used by temporary workers. Visa holders must have at least a bachelor’s degree to qualify, but typically will need a master’s degree or Ph.D. depending upon the relevant position. Each visa is specific to a position. Applications are made by the University and not the individuals. Applications require approved Labor Condition Applications from the Department of Labor with a favorable prevailing wage determination from the State Employment Service. The visas are valid for up to six years (two 3-year periods). These visas are appropriate for tenure track positions and for professional positions that are considered recurring.

- **TN visa**: TN visas are intended for temporary professional workers under the North American Free Trade Agreement provision for Canadian and Mexican citizens. Individuals must be employed in a profession designated under the TN Schedule. Activity must be temporary but is renewable in one year increments. These positions require a bachelor’s degree and may not be used for tenure track positions.

- **Permanent Residency**: If a candidate is offered a permanent position, the University can initiate the permanent residency process using the Labor Certification process. If the position is temporary, the University cannot initiate the process.
AUDIT OBJECTIVES

The focal points of this audit were to determine whether:

A. non-resident faculty have appropriate visas which are properly authorized and in compliance with all applicable laws, regulations, and University policies, and

B. the appropriate immigration and work eligibility documents for international faculty are on file and updated timely in accordance with laws and regulations.

SCOPE AND METHODOLOGY

The audit scope was limited to the examination of the immigration documentation on file in HRS and Office of International Programs (OIP) for foreign faculty members employed as of September 1, 2012. Audit procedures performed included the use of Computer Aided Auditing Techniques, reviewing applicable federal, state, and University policies, rules, and regulations, interviewing key personnel, and performing limited testing.

The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors.

AUDIT RESULTS

A. Authorization and Compliance

A.1. J-1 Visas
Auditors analyzed records from Business Information System (BIS) to identify non-citizen employees. Fifteen of 34 J-1 visa employee files were randomly selected and tested for the following attributes:

- temporary non-tenure track position
- proof of health insurance on file
- offer letter on file
- I-9 signed and dated
- visa sponsored by UTEP
- updated records in the Student and Exchange Visitor Information System (SEVIS)

I-9 forms were processed for two J-1 visa holders sponsored by other institutions. As a result, one of the two was paid as an employee instead of an independent contractor. This is a violation of Code of Federal Regulations Chapter 22 Section 62.20(g) which states,

"Professors and research scholars may participate in occasional lectures and short-term consultation, unless disallowed by the sponsor. Such lecturers and consultations must be incidental to the exchange visitor’s primary program"
activities. If wages or other remuneration are received by the exchange visitor for such activities, the exchange visitor must act as an independent contractor, as such term is defined in 8 CFR 274a.1 (j)."

Recommendation:
Non-resident visitors sponsored by another institution should be appropriately identified as an affiliated worker for the University. If the University wishes to employ the visitor for a short term assignment, evidence of legal authorization and prior written approval from the sponsoring institution should be obtained and retained in the employee records.

Management Response:
HRS front desk staff has been retrained in the inspection of all work authorization documents to ensure that prospective employees are authorized to work at UTEP. Questions regarding work authorization documents by HRS front desk staff will be directed to HRS management for resolution.

Additionally, when a non-resident visitor requires access to email, buildings, etc., they will be entered into HRMS as an affiliated worker. This will ensure that only minimal biographical information is entered into the system and that the I-9 work authorization is not entered or given. This will prevent these visitors from being employed by the University without the proper work authorization.

Responsible party: Jesse Manciaz, Interim Director, Human Resource Services

Implementation date: 09/01/2013

A.2. Tenure Track Positions
As previously reported in the Follow-up Audit #10-13, dated 07/15/10, two J-1 visa holders were hired as tenure track faculty at UTEP. This is a violation of federal regulation 22 CFR 62.20(d) (1) which states, "The participant must not be a candidate for a tenure track position."

Both professors obtained TN temporary visas in December 2008 when their J-1 visas expired. TN visas are inconsistent with tenure track positions. According to 8 CFR 214.6, a TN visa is a temporary visa for employment "with a reasonable, finite end that does not equate to permanent residence." The two professors and their lawyer were scheduled to meet in April 2011 to change their visa status; however, the two tenure track professors continue to hold TN temporary visas.

Recommendation:
HRS should encourage the professors to obtain visas that correspond to their permanent tenure track positions. Processes should be established to ensure consistency between visas and tenure track positions for international faculty.

Management Responses:
Although a TN Visa (temporary in nature) is not the ideal visa for a tenured track professor, there is not a legal requirement that states that this type of visa is not valid for tenure status. Thus, the professors are legally entitled to work in the U.S.
The university has encouraged a more expeditious management of this case without overstepping the boundaries of the employees’ rights. Both professors are working diligently towards their permanent residency status, are legally here, and keep us current of their plan. Additionally, in December 2010, HRS hired its first Immigration Manager that adds additional oversight and control to the H1-B process and some TN Visas.

**Responsible party:** Jesse Manciaz Interim Director of Human Resources

**Implementation date:** Immediately

**A.3. H-1B Visas**
H-1B temporary workers are defined as persons who will perform services in specialty occupations on a temporary basis. The Immigration Act of 1990 defines specialty occupation as: "an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation."

There were 59 H-1B visa holders, and auditors randomly selected 7 files which were reviewed for completeness of documentation. All seven contained the required documents without exception.

**A.4. TN Visas**
TN visas allow citizens of Canada and Mexico, as North American Free Trade Agreement professionals, to work in the U.S. in a prearranged business activity for a U.S. or foreign employer. UTEP assists in obtaining TN visas by providing employees with offer letters.

Auditors reviewed the files for all TN visa holders processed between September 2010 and September 2012 and determined that they were in compliance with federal laws.

**B. Documentation Requirements for I-9 Forms**
The attributes selected for I-9 testing were the requirements for employment authorization verification listed on I-9 form instructions and authorized by the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a). The attributes tested were as follows:

1. I-9 exists and is complete and updated upon re-verification of employment eligibility.

2. Proper Supporting Documentation - Employees must present original documents that prove identity and employment eligibility.

3. Accuracy of immigration status recorded in BIS.

Testing the I-9 forms for all visa holders, as defined above, confirmed that they all met federal requirements for I-9 documentation and were properly updated in BIS.
CONCLUSION

Based on the results of audit procedures performed, we conclude that the Faculty Visas process is in compliance with federal, state and institutional guidelines with the exceptions of certain areas of J-1 Visa; however, we believe that the department can strengthen existing controls by implementing the recommendations detailed in this report.

We wish to thank the directors and staff of both HRS and the OIP for their assistance and cooperation provided throughout the audit.