

MEMORANDUM

TO: Deans, Department Chairs, and Administrative Department Heads

FROM: Carolyn Gregory, Vice President for Human Resources
Mark Murray, Director, Foreign Faculty and Scholars

SUBJECT: University Policy for the Employment of Nonimmigrant Workers and
Immigrant Worker Petitions (“green cards”) and the new DOL
Regulation

EFFECTIVE DATE: October 1, 2007. *Supersedes Memorandum of the same subject by
Vice President Anthony Kinslow dated January 1, 2005*

This memorandum is intended to reaffirm existing policy concerning the recruitment and retention of international workers. It will also clarify which associated costs for the recruitment and retention of international workers must be paid for by the University (and not passed through to the worker).

On July 16, 2007, the Department of Labor issued a final regulation pertaining to Applications for Permanent Labor Certification. The regulation, in part, defined employer responsible costs associated with the processing of Applications for Permanent Labor Certification. This new regulation effects exception based applications and the details of the program are included below. The regulation does not effect how the University handles applications for assistant professor because the University has always funded these applications.

Exception based applications (outsourced program) began in April 2005 as a way for the University to recruit and retain the most competitive, non-tenure track candidates. Since the program began, 71 non-teaching research and staff employees have successfully completed the program and received or will be receiving their permanent residence. Additional benefits from the program have been realized by putting more green cards in the hands of more non-tenure track employees increases the University’s ability to apply for federal grants that require the applicants to have green cards as a prerequisite to application.

Note: All other petition and application filings by FFS, referenced below, are made at no cost (other than prescribed gov't filing fees) to departments (see www.case.edu/finadmin/humres/ffs/).

- 1. Temporary Worker Petition, Form I-129** is required for workers in specialty occupations, H-1B visa and Persons of Extraordinary Ability, O-1 visa. These classifications of workers receive clearly defined periods of authorized stay from USCIS and can be employed only by the petitioner/employer who received approval from USCIS. Official appointment letters between the employer and the worker are required by USCIS. Temporary workers under H-1B and/or O-1 petitions can receive an initial three (3) year authorized period from USCIS; contingent on appointment dates and guaranteed funding. Letter of appointment must be issued in conformity with guidelines contained in the *Faculty Handbook* and the *Policy and Procedures Manual*.
- 2. Application for Alien Employment Certification, ETA-9089**, is the application for labor certification filed by the employer. The application, in most cases, is the prerequisite for the Immigrant Petition for Alien Worker, Form I-140. The ETA-9089 is filed by the University with DOL only when there is recognizable long term benefit to Case. Long-term benefit is defined in the *Faculty Handbook*, Chapter 3, Part F (“Qualification and Standards for Appointments, Reappointments, Promotions and Tenure”). The University **does not** immigrate **staff** or **faculty below the rank of Assistant Professor**.
- 3. Immigrant Petition for Alien Worker, Form I-140**, is filed by the employer to classify a current or prospective worker under first, second or third preference employment-based immigrant category. The I-140 must be accompanied by a Dean’s letter of appointment covering twelve consecutive months from the time of filing. The University reserves the right to file an Immigrant Petition for an alien worker, in all cases.
- 4. Guidelines for Exceptions.** Exceptions to this policy must be routed through the appropriate Dean or Vice President prior to being forwarded to the Chief Financial & Administrative Officer for consideration of the exception request. Some exception requests may require legal counsel review. If an exception is approved, requesting departments will coordinate their activities through the Office of Foreign Faculty and Scholars (FFS). FFS will provide departments with a list of authorized, private attorneys with whom the departments will be free to select from for the purpose of processing their requests. Departments will be responsible for and bear the associated costs to file exception based applications and or petitions. Pursuant to 20 CFR, Part 656.12(b), departments cannot subrogate labor certification costs to employees (see **Addendum I** guidelines below).

In addition to the above mentioned petitions/applications, the process will require execution of front-end and internal forms. Recommendation for Appointment of H-1B/J-1/O-1 category worker must be endorsed by the department budget manager, department Chair, and Dean prior to government filing. These forms ensure the availability of adequate funding and funding source(s). Internal procedures involving affirmative action, although separate from USCIS/DOL matters, must be observed scrupulously. It should be noted that all processes referred to in this memorandum will be reviewed quarterly, by the VP for Human Resources to ensure compliance. Review will be accomplished by way of the Transaction log, maintained by the Office of Foreign Faculty and Scholars.

Frequently, and in order to fulfill the purpose of the University, an application for dependents by a foreign worker must be filed concurrently with the University's petition/application. In most cases, the University will assist the foreign worker in preparation of these forms but occasionally the foreign worker will prefer to hire his/her own attorney and/or agent to prepare the forms.

Therefore, the following applications/petitions may be prepared by a foreign worker's (at his/her own expense) attorney and/or agent, as long as it is clearly understood that the Director, Office of Foreign Faculty and Scholars reserves the right to review and, if necessary, request additional information, or to refuse the forms altogether:

- **I-539 Application to Extend/Change Nonimmigrant Status.** If the I-539 is filed in connection with a Nonimmigrant worker petition or case, then the University reserves the right to file concurrently;
- **I-485 Application to Register Permanent Residence of Adjust Status.** This application, signed by the beneficiary, can be filed concurrently with the employer's Petition for Alien Worker, I-140;
- **I-612 Application for waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act Based on Hardship or Persecution.** If the Exchange Visitor/Person of Extraordinary Ability is an employee of the University, then the employee's attorney/agent must notify the Office of Foreign Faculty and Scholars that a waiver has been filed. Waiver requests filed with an Interested Government Agency (IGA) will only be filed by the University when the University is the employer of a tenured/tenure-track faculty position. Only Deans are authorized to sign these waiver requests.

ADDENDUM I: Guidelines when considering an exception to the University policy regarding petition for immigrant workers

Background

On January 1, 2005, a policy statement regarding employment of nonimmigrant workers and the petitioning for immigrant workers was amended and reissued by the Vice President for Human Resources, which supersedes the March 23, 1999 Memorandum of the same subject issued by University President Agnar Pytte. The policy statement, among other things, addressed the policy and procedures to be followed when filing Petitions for Immigrant Workers. Pursuant to established procedures, and mirrored by Article 5 of the Faculty Handbook, the University will consider petitioning for an immigrant worker when a recognizable long-term benefit to the University has been established. Long-term benefit has been established for the Assistant Professor level and may include economics and opportunities for renewal of a faculty appointment.

Guidelines

If departments are considering an exception to this policy statement, they should prepare a justification letter, which addresses the following:

- Program or activity the worker is involved in, length of service, and estimated period of continued service;

- How the worker is needed as an integral part or as an essential component of the program or activity;
- What recognizable current and future benefit the worker brings to the University;
- Present and future funding source for the worker's position;
- Efforts, if any, that have been made to recruit other qualified workers.

After completion of the aforementioned correspondence, the correspondence is to be routed to the appropriate Dean or Vice President for review and signature. The appropriate Dean or Vice President will then forward the correspondence to the University Chief Financial & Administrative Officer who must approve before the petition is authorized. The Chief Financial & Administrative Officer may seek legal counsel as necessary prior to authorizing the petition.

The Office of Foreign Faculty & Scholars should be notified, as soon as possible, by the department, when an exception to this University Policy is anticipated. The Office of Foreign Faculty and Scholars will coordinate this activity on a first come, first served basis.