OISS SUMMARY OF H-1B PROCEDURES

Brief Introduction

In general, an application for change to H-1B visa status takes about three months from the time INS receives the application. This same schedule applies to extensions of previously approved H-1B visa status cases. Due to the complexity and breadth of information required to complete and file visa-related documents related to the hiring of H-1B Temporary Workers, URI hiring departments are advised to secure the assistance of an immigration attorney (external to URI) to complete the process and forms. Office of the Provost and the director of Personnel Services will provide approval signatures on behalf of the University of Rhode Island.

- All petitioning employers must pay a new anti-fraud fee of $500 and the petition fee of $325 for each new petition filed. The Department of Human Resources will pay these fees

Hiring departments must gain the approval of the U.S. Department of Labor before filing an application with the United States Citizens and Immigration Services for an H-1 B Temporary Worker. Hiring departments must satisfy four conditions of employment before gaining the approval of the Department of Labor.

Premium Processing

If either the employer or the beneficiary (the alien) wishes to expedite the process, either party may file for the "Premium Processing" option which guarantees adjudication of the case within 15 days from the INS receipt of the application with a money back guarantee. To request the Premium Processing Service, the employer or the alien must file form I-907.

- Should an applicant choose to submit his/her application through premium processing, they will be expected to pay Premium Processing Fee of $1000.

Four Conditions

- H-1B employer must agree to pay an H-1B nonimmigrant the “required wage rate,” which is defined as the higher of two figures: the “actual wage rate” or the “prevailing wage rate.”
- The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.
- The employer must attest that at the time of filing, there is not is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment.
- The employer must provide notice of the filing of the Labor Condition Attestation in two ways:
  - Notice to employees at the work site;
  - Notice to the collective bargaining representative.
    - If there is no bargaining unit, a paper notice, posted for ten days in at least two “conspicuous” locations at each site where the H-1B employee will be working;
- A ten-day electronic posting on the employer’s Web or internet site where vacancy notices are usually posted; or
- A one-time e-mail to all employees in the same occupational classification.

**H-1B Hiring Process**

Three major stages characterize the H-1B hiring process:

**Stage One:**

- Secure the Assistance of an H-1B Specialist
- Approval of the Prevailing Wage Request form with the Rhode Island Department of Labor and Training, Foreign Labor Certification Unit (Approximately 1 week)

**Stage Two:**

- Approval of the Labor Condition Attestation requires submission of Form ETA 9035E by the U.S. Dept. of Labor (Approximately 1 week)

**Stage Three:** (after approval of ETA 9035)

- Approval of the H-1B visa application requires submission of the items below:
  - Form I-129 (H-1B Petition); Forms I-129 Supplement H; and I-129 Petition Fee ($320)
  - Form I-907 – Premium Processing Fee Form (if applicable)
  - Copy of approved Labor Condition Attestation (LCA)
  - Employer support letter, which includes name of the position, salary, employment period, description of duties, requirements for the position including a statement that the employee has the required qualifications (degree/experience); a statement regarding Labor Condition Application; and a statement regarding payment of return airfare if position is terminated.
  - Applicant’s CV and proof of highest degree/certificate in English and/or official translation
  - Photocopies of all relevant immigration documents (e.g., I-20, DS-2019, I-94 card(s), passport ID page, etc.)
  - If applicant is in the US, documentation that confirms that current status is valid
  - All relevant payments payable to the Department of Homeland Security

- The maximum amount of time permitted in H-1B status is six years, which is reduced by any prior periods of stay in any H-classification (this includes H-4 dependent status). However, an H-1B petition is granted for a maximum of three years each time.
- For tenure-track positions, departments should request approval for a full three-year period.
- Persons who are or have been in J-1 or J-2 status and are still subject to the “two-year home country residency requirement” are not eligible for change of status to H-1B until the two-year requirement is fulfilled or a waiver is obtained. The waiver process can take six months or longer.