H-1B Visa Training

Human Resources
&
Office of International Students & Scholars
January 29, 2014
H-1B Visa

• Work visa that allows employers to temporarily hire foreign nationals in a specialty occupation (minimum requirement of a bachelor’s degree)

• Valid for a maximum period of six (6) years – offered for up to three (3) years at a time (possible extensions beyond six years under certain circumstances)

• Salary to be paid must meet the “prevailing wage” which is based on job duties and job location or actual wage

• Dual Intent – may apply for permanent resident card

• For corporate employers there is a quota limit on the number of H1B visas granted within a year; universities are exempt from the quota
H-1B Visa

• Prevailing wage determination (determined by the Foreign Labor Certification Data Center Online Wage Library based on area of employment)

• Attestation to Department of Labor (through proof of good faith recruitment)

• Maintenance of a Public Access File

• Subject to audit from Department of Labor (DOL) and United States Citizenship & Immigration Services (USCIS)
Where do I begin?

H-1B Visa & PERM Manual
- Approval to Initiate/Extend/Amend Form
- H-1B Quick Reference Guide & PERM/PR Fact Sheet
- Faculty PERM Search Ad Reference Guide -NEW
- FAQ

H-1B Visas (Flowcharts & Written Steps)
- Faculty
- Staff
- Postdoctoral Research Associates/Fellows/Scholars

H-1B Visa Extensions(Flowcharts & Written Steps)
- Faculty
- Staff
- Postdoctoral Research Associates/Fellows/Scholars
Before I begin, what do I need to know?

- Specific to the employer (Rice), work location, the job duties & work schedule (full time or part time)

- Export Control I-129 Compliance Form – signed by PI/Hiring Manager, Dept. Chair & Dean
  - Cannot proceed with H-1B application (Form I-129) without Export Control Form from Rice
  - Form was recently updated to address in more detail some of the most asked questions
  - Melissa Gambling, Compliance Manager in the Office of Sponsored Research
    mgambling@rice.edu or x3884

- HR will need H-1B Approval Form and most recent job description from RICEWorks if a staff member or a short job description for faculty and postdocs that details specific duties
Costs/Fees (for Universities)

- H-1B - Approx. $2,500 - $4,000
  - Anti-Fraud Fee - $500 (must be paid by the University)
  - Premium Processing - $1,475

- H-1B with Dependents – Approx. $3,000 - $5,000

- Revocation of H-1B - $215

- Return transportation if termed involuntarily before visa end date.
  - Document, document, document!!!
Who Pays what?

• Employer (department) **MUST** pay the $500 anti-fraud fee

• Employer Must Pay **IF** Payment by the Employee will Reduce the Salary below the Required Wage Rate.
  □ Attorney Fees.
  □ $325 USCIS H-1B Filing Fee.
  □ Possibly other H-1B costs.

• Either Employee or Employer May Pay
  □ H-4 dependents- legal fees, filing fees and costs.
  □ Premium Processing costs if premium processing is only for H-1B worker’s convenience.
  □ *Initial* transportation from home country to the U.S. (*not liable for H4 family*)
Processing Time

• 2 to 4 weeks to gather information and complete all the necessary forms

• 4 to 6 months for new visas without premium processing

• 2 to 5 weeks with premium processing

• Expect an additional delay of 1 to 2 months if the new hire is coming from abroad
I’ve submitted all the forms, when can my employee begin to work?

<table>
<thead>
<tr>
<th>If...</th>
<th>Can begin work and pay...</th>
</tr>
</thead>
<tbody>
<tr>
<td>the individual is not working for Rice currently and this will be his/her 1st H-1B visa (i.e., moving from F-1 or J-1 visa to H-1B visa)</td>
<td>when the Approval Notice is received by Rice from US Citizenship &amp; Immigration Services (USCIS)</td>
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<tr>
<td>the individual is not working for Rice currently, but is coming to Rice directly from his/her previous employer where he/she had an H-1B visa <em>(this is known as “porting” his/her H-1B to Rice)</em></td>
<td>when USCIS receives the visa application and issues a receipt notice (Form I-129)</td>
</tr>
<tr>
<td>the individual is currently a Rice employee and is moving from another work visa (i.e., J-1, F-1) to an H-1B visa</td>
<td>when the Approval Notice is received by Rice from US Citizenship &amp; Immigration Services (USCIS)</td>
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Amending an H-1B

• Before changing an employee’s job, please consult first with HR for staff & faculty and OISS for postdocs

• Amended petition is required before material changes may be made to the employee’s job

• Amendments can take 3 to 4 weeks to process and cost the same as regular H-1B’s minus the $500 anti-fraud fee

• Depending on the change, the employee cannot begin to work under the new hours, duties, salary or work location until the amended H-1B visa petition (Form I-129) has been received by USCIS.
Amending an H-1B

Examples of “material” changes:

- Move from full time to part time status and vice versa
- Change in actual job duties (not funding) or adding additional work duties (ex: teaching a course if teaching was not part of the original H-1B application.)
- Changing work location (i.e., working in lab within the TMC)
- Decrease in salary.
Benching

• “Benching” is not allowed - wage must be paid at all times except for voluntary leave for employee’s convenience or when circumstances render the employee unable to work (e.g. maternity leave, accident)*

• Cannot be placed on an unpaid leave unless it’s at the request of the H-1B employee

*Courtesy of a FosterQuan Presentation-Fall Seminar 2012
I got an email from FosterQuan about an extension, what do I need to do?

- Employee’s current H-1B visa status is about to expire (Usually notified 6 months prior to extension)

- If department wants to continue to sponsor the employee, then,
  - Send Approval to Extend Form and job description to HR if it’s a staff member or faculty and to OISS if it’s a postdoc
  - If not, please inform FosterQuan, Human Resources and OISS
Costs/Fees for Amendments and Extensions (for Universities)

- H-1B - Approx. $2,000 - $3,500
  - Premium Processing - $1,475

- H-1B with Dependents – Approx. $2,500 - $4,500

- Revocation of H-1B - $215

- Return transportation if termed involuntarily before visa end date.
  - Document, document, document!!!
I’ve submitted all the forms for the amendment/extension, can my employee continue to work?

He/She can continue to work for Rice even if the current H-1B expired or is about to expire with a 240 day extension based on the date when USCIS received the visa application and issues a receipt notice (Form I-129)

- For example: H-1B visa expired on 01/31/2013; Visa was amended and/or extended on 10/15/2012, employee is allowed to work until 06/12/2013.
Terminating a Visa...what do I need to know

- If an H-1B employee (including postdocs) leaves Rice either voluntarily or involuntarily before the end of his/her H-1B visa (not always the same as their Rice appointment period), Rice will have to pay the $215 revocation fee to have the H-1B revoked.

- If the employee is terminated involuntarily or is not reappointed through the end of his/her H-1B visa end date, then the employer must offer to pay for “reasonable return transportation” to their home country.

- Offer should be made in writing. If the individual declines return transportation, this also should be documented in writing.
Terminating a Visa...what do I need to know

• Revocation of the H-1B visa is sent FosterQuan to the DOL and USCIS, thus relieving Rice from further payment obligations and responsibilities for the H-1B employee. Revocation of the H-1B is necessary to limit payment obligations.

• The H-1B employee should be advised with as much notice as possible of their Rice end date in order to plan ahead for other employment opportunities, immigration options, etc.

• In these situations, H-1B employees should be directed to contact Adria or Ben to discuss other possible visa options.
When thinking of Postdoctoral Hires, think of the Office of International Students & Scholars (OISS)
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**Visas that Postdocs Tend to Use:**

- F-1 Optional Practical Training (OPT)

- J-1 Exchange Visitor (includes doing the DS-2019 Request Form)
  - J-1 Interns – New Form: DS-7002

- H-1B
When thinking of Postdoctoral Hires, think of the Office of International Students & Scholars (OISS)

When is the H-1B Usually Used for Postdocs?

- After using up all of their 1) OPT or 2) J-1 Program
- OR on rare occasion when the J-1 visa is not available
When thinking of Postdoctoral Hires, think of the Office of International Students & Scholars (OISS)

Funding Availability for H-1B Processing of Postdocs

- Completed all “free” visa possibilities

- Commitment from hiring Academic Department AND Postdoc to stay at Rice for at least one year beyond “free” visa.

- Examples:
  - F-1 on Optional Practical Training after graduation from another school
When thinking of Postdoctoral Hires, think of the Office of International Students & Scholars (OISS)

Examples:
- J-1 on Academic Training after graduation from another school
- J-1 scholars from Rice – must have waiver of two-year rule, if applicable
- H-1B scholars transferring in from another school

Rice funding covers also:
- Dependents on an H-4 (Special note: Be sure to include them in the original request for the H-1B. Can be problematic if it is done afterwards.)
- Revocation
When thinking of Postdoctoral Hires, think of the Office of International Students & Scholars (OISS)

**Process for Hiring an H-1B Postdoc**

- Go to website to initiate form: [http://oiss.rice.edu/content.aspx?id=258](http://oiss.rice.edu/content.aspx?id=258) (Section VI)

- Hiring department send “Approval to Initiate/Extend H-1B Visa Application” to OISS

- Must include:
  - Job description
  - Chair’s signature on Approval form
  - Appointment paperwork, including offer letter and PAF
  - Export Control Form
When thinking of Postdoctoral Hires, think of the Office of International Students & Scholars (OISS)

• If the postdoc comes to the OISS advisor for immigration advisement, the OISS advisor will contact the department about their request.

• OISS informs HR and FosterQuan of H-1B request
  ▫ Provides approval form and job description
  ▫ Confirms arrangements of payment

• FosterQuan follows up with department and postdoc
  ▫ Requirements for LCA (Labor Condition Authorization) and Department of Labor
  ▫ Confirmation of filing with USCIS (Citizenship and Immigration Services)
  ▫ Process can take 6 to 7 months for H-1B approval
When thinking of Postdoctoral Hires, think of the Office of International Students & Scholars (OISS)

**Special Notes:**

- For ALL H-1Bs (including faculty and staff), OISS needs for them to check-in our office.
- Additional OISS Services:
  - Guidance on travel outside the US
  - English classes
  - Immigration and academic seminars
  - Cultural events
  - Tax support software
QUESTIONS
THANK YOU!

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Employer Sponsored Permanent Residency Applications

Human Resources

February 12, 2014
What’s Employer Sponsored Permanent Residency with PERM?

It’s one way (out of several ways) that permanent residency is granted to an individual

Employment Based with PERM (sponsored by employer – Rice)

Family sponsorship

Political asylum

Diversity lottery

Self sponsored based on extraordinary ability

National interest waiver
Beginning The Conversation and Picking the Path

- What’s the employee’s current immigration status?
- Is employee in a permanent position or will be moving to a permanent position?
- Is the PI and/or department chair/manager willing to sponsor the employee?
- Does the employee have any options other than employer sponsored PR?
- Have employee consult with OISS (and possibly our outside immigration attorney)
Rice’s most common Employer Sponsored Permanent Residency Processes

- **PERM (employment based)**
  - Based on need to hire the foreign national because there are no qualified US workers “able, willing, qualified and/or available” to do the work for the prevailing wage.
  - Requires labor certification based on “testing the market”

- **Outstanding Researcher**
  - For individuals who are recognized internationally as outstanding in a specific academic area
  - Does not require labor certification
PERM Permanent Resident Process

1. Labor Certification PERM (Program Electronic Review Management) submitted to DOL for certification

2. I–140 Form (Immigration Petition for Alien Worker) filed with USCIS

3. I–485 Form (Adjustment of Status) filed with USCIS
PERM is...

- The first piece of the process overseen by the Department of Labor (DOL)

- Rice “tests the market” through good faith recruitment, and attests that there are no “able, willing, qualified and/or available US workers to do the job for the prevailing wage.”

- Prevailing Wage is required

- Employer, location, position specific, and

- Employer MUST pay for PERM costs
Three Types of PERM

- Regular PERM (for staff employees)
- PERM Special Handling (for newly hired faculty)
- PERM Hybrid (for faculty who have missed the window of time to do “special handling”)
Regular PERM for Staff

**Prep Work**
- Review process
- Questionnaires
- Job description review
- Pre-approval form
- Prevailing wage (about 60 days)

**Post & Advertise**
- Post in RICEWorks
- Paper Posting Notice in HR office Student Center
- Advertise (2 Houston Chronicle Sunday ads, Work in Texas for 30 days, Outside job board (i.e. Monster.com) & Professional journal)

**Market Testing**
- Review applications
- Interview
- Assess
- Prepare summary documentation

**PERM submitted for certification to Department of Labor**

**I–140 Form (Immigration Petition for Alien Worker) filed with USCIS**

**I–485 Form (Adjustment of Status) filed with USCIS**
Common Questions

- What happens if we find someone who is minimally qualified?
- What about applicants who require sponsorship?
- Do we have to interview applicants who don’t live in Houston?
PERM (Staff) Expenses & Timing

- TOTAL cost is approximately $10,000 (including advertisement costs)
- PERM portion of process MUST be paid by employer (department).
- PERM expenses are approximately $5,000
- Costs increase if including sponsorship of family members (spouse/children)
- Processing time is variable based on multiple factors:
  - Preparation and recruitment period
  - Employment based category and visa priority dates
  - Country of origin
  - Possible delays include audit, “request for evidence,” or additional security review
PERM Special Handling (Faculty)

- For college/university teachers
- Allows for use of “most qualified” vs. “minimally qualified”
- If we submit the PERM within 18 months of the “official offer letter,” we can use the recruitment process that was used in identifying the faculty member – assuming we used a compliant job advertisement in the search
- Great option for assistant professors
Start every faculty search with job advertisement that can support PERM SH

Keep copies of all job ads, job offer letters, and details on the recruitment process

*If foreign national is hired that needs PERM SH,* preparation of PERM application including prevailing wage determination

PERM submitted for certification to Department of Labor

I–140 Form (Immigration Petition for Alien Worker) filed with USCIS

I–485 Form (Adjustment of Status) filed with USCIS
Faculty Search Advertisement

- Placed in a recognized national, professional journal – if on-line, must be up for 30 days

- Include job title

- Notes name of Rice University and reference to location in Houston, TX

- Job duties

- Note minimum education required and if for assistant professor note “PhD or PhD requirements fulfilled by November 1 of the year employment commences.”

- Minimum years of experience if required

- Details on how to apply
Approximately $9,000 plus dependent processing costs if applicable

PERM portion of process MUST be paid by employer (department).

PERM expenses are approximately $4,000

Processing time is variable based on multiple factors:
  * Country of origin
  * Possible delays include audit, “request for evidence,” or additional security review
PERM Hybrid for Faculty

PERM (Staff)  
“testing the market”

PERM SH (Faculty)  
“most qualified”

PERM Hybrid (Faculty)  
Allowed to use “most qualified” standard from PERM PH, but have to PERM “market testing” requirements.
PERM Hybrid for Faculty

- Process available if the 18 month window for submitting PERM is missed or if the job ad does not meet the PERM SH requirements.

- Requires “testing the market” by posting, advertising following the regular PERM requirements and interviewing applicants.

- Hybrid refers to using “most qualified” standard from PERM SH but having to use regular PERM “market testing” requirements.
PERM Hybrid for Faculty

**Prep Work**
- Review process
- Questionnaires
- Job description review
- Pre-approval form
- Prevailing wage

**Post & Advertise**
- Paper Posting Notice in HR office
  - Student Center
- Advertise (2 Houston Chronicle Sunday ads, Work in Texas for 30 days, Outside job board (i.e. Monster.com) & Professional journal)

**Market Testing**
- Review applications
- Interview
- Assess
- Prepare summary documentation

**PERM submitted for certification to Department of Labor**

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PERM Hybrid (Faculty) Expenses & Timing

- Approximately $9,500 (including advertising costs)
- PERM portion of process MUST be paid by employer (department).
- PERM expenses are approximately $4,500
- Costs increase if including sponsorship of family members (spouse/children)
- Processing time is variable based on multiple factors:
  - Country of origin
  - Possible delays include audit, “request for evidence,” or additional security review
Outstanding Researcher/Professor

I-140 Form (Immigration Petition for Alien Worker) filed with USCIS

I-485 Form (Adjustment of Status) filed with USCIS

*concurrent filing
Outstanding Researcher/Professor

- Exempt from labor certification (PERM)

- Requires Rice sponsorship in form of support letters and signatory on PR forms

- Especially good option for faculty and permanent researchers who are considered outstanding by their peers

- Internationally recognized as outstanding

- Minimum of 3 years of teaching or research experience
Outstanding Researcher/Professor

- Job offered is required

- Must meet at least 2 threshold criteria (awards, memberships, publications, etc)

- Expenses are approximately $7,500 and may be paid by department or employee

- Rely heavily on input from immigration attorney on strength of case
Schedule A, Group II in arts or sciences and for university professors based on PERM application.

**Advantage:** No PERM recruitment.

**Criteria:** Prevailing wage determination; notice of filing a PERM application with DHS; widespread acclaim and international recognition; work in the field in the past year; work will require exceptional ability; *and* at least 2 of the following seven: international prizes, memberships, published material about the foreign national’s work, panel participation, significant contributions, scholarly publications, or work displayed.

*duplicate slide of FosterQuan Fall Seminar 2013*
Online Permanent Residency and H1B Visa Manual
http://oiss.rice.edu/content.aspx?id=258

Faculty Search Advertisement Requirements
http://oiss.rice.edu/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=1188

For guidance on which PR process is most appropriate, first talk with Office of International Students & Scholars

To initiate PERM/PR or Outstanding Researcher PR contact Diana Garcia in HR (ext. 5252 or dmgarcia@rice.edu)
Questions?

Jana Callan (callan@rice.edu /x6717)

Diana Garcia (dmg2@rice.edu /x5252)