

APR 18 1984

April 19, 1984

ADMINISTRATIVE MEMORANDUM NO. 75 REVISED

TO: All Administrative Unit Heads

FROM: Andris G. Priede *A.G. Priede*

SUBJECT: VISAS AND PERMITS OF STAY FOR ALIENS INCLUDING STUDENTS, CULTURAL EXCHANGE VISITORS, FACULTY AND OTHERS TO BE IN ATTENDANCE OR EMPLOYED AT THE UNIVERSITY OF CINCINNATI

The University is in regular contact with the Immigration and Naturalization Service, the Department of Labor and the Department of State regarding foreign students, cultural exchange visitors and university faculty and other employees. Whenever the University must be in contact with any of these agencies with respect to an alien, his/her visa, permit of stay or otherwise, that contact must be made by or with the knowledge of the University's Office of International Services. When an alien is represented by an attorney, or in other appropriate cases, the University's Office of Legal Advisory Services will work with the Office of International Services and the alien's attorney to coordinate the University's contact with these agencies. It is the responsibility of the alien, his/her host department or employing department to contact the Office of International Services for assistance. Because the University cannot provide legal advice to individual aliens with respect to matters of immigration law, should such advice be needed, the alien is encouraged to seek competent legal counsel.

Examples of the types of contacts the University has with outside agencies with respect to aliens who may be or hope to be students, cultural exchange visitors or employees of the University and the applicable policies and procedures are as follows:

I. VISASA. STUDENTS

An individual alien who is lawfully in or coming to the United States as a student must have or secure an F-1 or J-1 visa.

The Office of International Services is notified when a foreign student wishes to enroll at UC. If all is in order, the Office will process the application. The Director of International Services (Mary Campbell) has been authorized by the Immigration and Naturalization Service and by the International Communication Agency to issue certificates of eligibility which a prospective student presents to the U.S. Department of State's representative in the foreign country who in turn issues a student visa. This Office represents the University in all students' relationships with the INS once the student is in the United States, and is also required by INS, as a condition of being granted the above authority, to report certain events to INS affecting the status of the student. This Office also handles all student work permits, transfers of schools, visa extensions, permits of stay, and students who drop out of school or fail in their studies.

B. CULTURAL EXCHANGE VISITORS

Certain exceptional students, teachers, professors, or research scholars sponsored by their governments or other organizations who are lawfully in or coming to the U.S. as cultural exchange visitors must have or secure a J-1 visa. Teachers, professors and research scholars who are cultural exchange visitors may be permitted to remain in the U.S. for periods not to exceed three years. Students who are cultural exchange visitors may remain as long as they continue to pursue their fields of study leading to a recognized degree.

The Director of the Office of International Services (Mrs. Campbell) has been authorized by the International Communication Agency to issue certificates of eligibility to cultural exchange visitors who will be in residence at the University of Cincinnati. That certificate enables the U.S. Department of State representative in the foreign country to issue a cultural exchange visa. Again, once the foreign national is on campus, this Office handles all matters affecting the visitor's status with the INS.

C. TEMPORARY EMPLOYEES

An individual alien who is already in the United States and wishes to remain here or who is in a foreign country and wishes to enter the U.S. for the purpose of temporary employment must have or secure an H-1 visa.

Qualified nonresident aliens may enter and/or remain in the U.S. to fill positions which are temporary. The focus is on the job, not the individual. Temporary in this context means lasting no more than five years. In the typical case, an employing department finds that either the only qualified candidate or the best qualified candidate to fill a temporary position is a nonresident alien. The individual may still be in a foreign country or the individual may be present in the U.S. on an F-1, J-1 or expiring H-1 visa.

In processing temporary worker petitions both the University (the employer) and the individual alien must execute and submit certain INS documents. The execution and submission of the documents to INS by the University is to be coordinated by the Office of International Services. It is the responsibility of the employing department to contact this Office as soon as the decision to pursue the temporary employment of an alien is made. In the case of temporary academic employment the concurrence of the appropriate Dean is required. In the case of non-academic employment, the concurrence of the University's Appointing Officer is required.

D. PERMANENT EMPLOYEES

An individual alien who is already in the U.S. and wishes to remain or who is in a foreign country and wishes to enter the U.S. for the purpose of permanent employment must have or secure a permanent visa.

1. Immigration Preference

To lawfully accept permanent employment in the U.S. a non-resident alien must satisfy the statutes and regulations applicable to immigrants, which limit the number of permanent visas available. These statutes also set out preferences for the allotment of visas. The practical effect is that few foreign nationals will be able to obtain visas to take up permanent residence in the United States unless they qualify for a preference.

There are two preference categories for permanent visas which are particularly significant to the University as an employer. They are the third and the sixth preference. The third preference makes immigrant visas available to: "qualified immigrants who are members of the professions or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States and whose services in the professions, sciences or arts are sought by an employer in the United States." The sixth preference makes immigrant visas available to: "qualified immigrants who are capable of performing specific skilled or unskilled labor not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States."

2. Labor Certification

Preference status requires action by the INS and the Department of Labor (DOL) acting through the Ohio Bureau of Employment Services (OBES). DOL's role is to provide certification that there are not sufficient domestic workers who are able, willing, qualified and available to fill the position. The Labor Certification process must be completed before an application for a permanent visa is made.

Labor Certification can be initiated only by the prospective employer (with certain exceptions applicable principally to physicians and surgeons), and requires the participation of the employer, the alien and DOL.

In instances at the University where the University as the employer must initiate the Labor Certification process, the employing department is to contact the Office of International Services which will coordinate the University's role in this Labor Certification process and subsequent application to the INS for a permanent visa. In the case of academic employment, concurrence of the appropriate Dean is required. In the case of non-academic employment, concurrence of the University's Appointing Officer is required.

The Office of International Services will work with the employing department, alien, counsel representing the alien and, as needed, the University's Office of Legal Advisory Services. Although the law does not require aliens to be represented by counsel in seeking Labor Certification and permanent resident status, they are encouraged to seek competent legal counsel. The University will normally cooperate with the alien and his attorney, if any, subject to concurrence of the appropriate Dean or the Appointing Officer as provided above. Although the University through the Office of International Services and others will facilitate the required University participation in the process leading to permanent employment and assist with routine forms and inquiries, the University cannot provide legal advice to individual aliens with respect to matters of immigration law.

II. PERMIT OF STAY

An international student, research scholar or visiting faculty member who has been issued an appropriate visa will also have been issued a Permit of Stay. If it appears that the time limits set out in this Permit of Stay will be exceeded, it must be either renewed or extended.

The process for the extension of Permits of Stay must begin at least one month prior to the expiration date of the Permit of Stay. Extensions of the Permit of Stay on a "J-1" visa take a minimum of one month after the application for extension has been received by the INS. Extensions of the Permit of Stay on a "F-1" visa take a minimum of three weeks after the application for extension has been received by the INS.

The University can not circumvent this process nor shorten the processing time of the applications for extensions.

It is the responsibility of the international student, research scholar or exchange visitor to be aware of the expiration date on their Permits of Stay and to file an application for an extension,

if necessary, within the appropriate time limits. The Office of International Services is the only office at the University where applications for the extension of Permits of Stay may be processed. The University itself can not renew or extend a Permit of Stay. It must be renewed or extended by the INS. The application form for all extensions must be signed by the Director of International Services, Mary S. Campbell, before the application is forwarded to the INS.

Questions regarding this memorandum should be directed to Mary S. Campbell at 475-2851.

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CC: President Henry R. Winkler