September 21, 2007

HR MEMORANDUM 08-01

TO: Leadership Team, Division Heads, Program Managers

FROM: Gregory Richmond
Human Resources Officer, TTI

SUBJECT: System Regulation 33.99.99 Employment of Foreign Nationals Revisions

The System Regulation on the Employment of Foreign Nationals has been revised to reflect changes as a result of the new rules recently implemented by the United States Citizenship and Immigration Services (USCIS). If you employ foreign nationals in your program or division, we recommend that you review the revisions in this regulation carefully so that you will be aware of your responsibilities regarding their employment.

The Regulation makes the hiring department responsible for preparing all documents related to the employment of a foreign national and for supplying all required supporting documentation needed to obtain work authorization. The hiring department must also notify the TTI Human Resources Office when a foreign national changes their address, reports for employment, fails to report for duty, terminates their employment, requires a visa extension, or considers a change in the employee’s scope of employment, training, work site, title, salary or percent effort.

The hiring department is also required to notify TTI Human Resources if the hiring department contemplates sponsoring the foreign national for permanent resident status. Before sponsoring a foreign national for permanent residency, it must be clearly demonstrated that sponsorship is in the best interest of TTI.

To sponsor a foreign national employee for permanent residency, the hiring department must:

- develop a written justification that clearly explains how the proposed sponsorship is in the TTI’s best interests in meeting critical scientific, teaching, public service and/or other needs;
- show that employment of the foreign national will continue for the foreseeable future;
- establish that funding to support the position is in place for a minimum of three years from the date of the written justification and there is a reasonable expectation that funding for the position will continue for the foreseeable future beyond the initial three-year period;
- show there is a reasonable expectation that the foreign national employee will remain with the System for a minimum of three years after acquiring permanent residency.

The written justification must be approved by the appropriate Program Manager, Division Head, Associate/Assistant Director, Human Resources Office and the Executive Associate Director.

This regulation further states that no System member will sponsor a permanent residency petition for a foreign national employed in a visiting or temporary position.
The regulation also makes each System member responsible for all reasonable and relevant costs and/or fees associated with filing a petition to sponsor a foreign national for employment, including the attorney’s fees of outside counsel authorized to represent the Texas A&M University System, if needed.

In cases where immigrant status is being pursued, the foreign national employee is responsible for filing the adjustment of status petition after the petition for immigrant status has been approved.

Regarding the hiring of foreign nationals to work outside the United States, the hiring department must contact the TTI Human Resources Office for assistance in determining the documentation and reporting requirements in the country of employment. The TTI Human Resources Office will assist the hiring department with determining and meeting those requirements.

The regulation also addresses the issue of continued employment by stating that the foreign national employee is responsible for maintaining valid immigration status and employment authorization to continue employment. The employee must immediately notify their supervisor of any change in immigration status. The hiring department is responsible for ensuring that visa extensions or changes in immigration status are properly documented in a timely manner on a new or recertified I-9 form. The hiring department must not continue to employ a foreign national if the employee has become an unauthorized alien with respect to employment.

The section of the regulation regarding the retention of counsel has not changed. A private attorney must not be engaged to represent any System member in any nonimmigrant or immigrant petition or application unless approved by the System Office of General Counsel. This regulation does not prevent a foreign national employee from retaining individual counsel to obtain his or her own legal advice or representation. A foreign national who retains personal counsel for obtaining immigrant status will do so with the understanding that TTI is not named as a petitioning employer. Assistance from TTI in these situations is limited to an official letter of recommendation, if appropriate.

The TTI Rule that supplements this regulation has been revised to incorporate these changes in the System Regulation and will be submitted to the System for review and approval. Please let me know if you have any questions regarding this regulation.