Immigration 101

Or

Welcome to our world!

Immigration References for Human Resource Offices

Presented by

Carol Holz
Associate Director, Immigration Compliance
University of Alaska Fairbanks
Contents

F-1  Students
    Employment
    Tax withholding
    Sample Documents

J-1  Categories
    Employment
    Tax withholding
    Sample Documents

H-1B  Specialty Occupations
    Employment
    Tax withholding
    Sample Documents

Trade NAFTA (TN)
    Employment
    Tax withholding
    Sample Documents

Permanent Resident (PR/Green Card)
    Employment
    Sample Documents

Regulatory Information
    Substantial Presence Test
    Social Security Administration
    Employment Authorization of Foreign Nationals
    Scholarship Withholding
This information is designed to provide general information and sample documents to staff members within an organization to determine non-U.S. citizen eligibility for employment and the potential U.S. tax withholding requirements for those people.

This is not designed to be a comprehensive discussion of immigration and tax compliance, but provides regulatory citations and tools to assist in aspects of U.S. compliance issues in addition to the sample documents provided. For specific compliance issues, the references provided at the end may be useful. Additionally, it may be necessary to contact the organization’s general counsel or immigration attorney depending on your institutional policies and practices.
F-1 STUDENTS

Primary purpose for entrance to U.S.: Full-time study in an approved course of study.

Employment:
On-campus employment is permitted without additional immigration authorization. On-campus employment is authorized for the duration of the student’s authorized dates of attendance located in the Program of Study section of the SEVIS I-20 Certificate of Eligibility (I-20). Employment is limited to 20 hours per week while school is in session. Full-time employment is authorized when school is not in session, i.e., winter, spring and summer vacation periods.

Off-campus employment may be authorized. The authorization must be noted on page 2 of the I-20 and may be Curricular Practical Training or Optional Practical Training. Before off-campus Optional Practical Training employment can begin, the student must receive the Employment Authorization card from the U.S. Citizenship and Immigration Service Center with jurisdiction over the region in which the student’s school is located.

Tax withholding:
FICA: Exempt from FICA (Medicare and Social Security) tax for the first five calendar years present in the U.S. Note: Any portion of a calendar year counts as a full calendar year, i.e., an individual arriving in the U.S. in December loses one full year for that month.

Federal Income Tax: Students are considered non-resident aliens for the first five calendar years of presence in the U.S. and for the sixth year if they leave before the 183rd day of presence (calculation of substantial presence). During that period, IRS forms W-4 must be completed as Single, one exemption and enter “NRA” on line 6 of the W-4.

Tax Treaty Benefits: Students from countries with which the U.S. has an income tax treaty may be exempt from U.S. federal income tax withholding. To claim exemption from withholding, students must complete and submit IRS form 8233 and the related attachment letter to the designated campus employee. The campus employee must certify the form and submit the form 8233 and attachment letter to the IRS within five days of receipt from the student. A copy of the certified form must be returned to the student. See IRS Publication 519 for a listing of countries that have tax treaties with the U.S. See Appendix A for the procedure for students to claim the exemption. NOTE: to be eligible for tax treaty benefits, the student’s entry to the U.S. must have been in F-1 status. Students who have received a change of status to F-1 from any other category, including F-2, and who have not left the U.S. and reentered in F-1 status are not eligible to claim tax treaty benefits.

Sample documents follow.
Although this is a U.S. passport, under agreed-upon international standards the majority of countries use the same format. Under the machine-readable information, note the P<3-digit nationality abbreviation; last name <<First Name. If there was a middle or subsequent name, it would follow a single <. Not all passports use the month abbreviation, however the order is generally dd-mm-yyyy if the alphabetical abbreviation is not used.
NOTE: Canadians do not have a visa. They will have an arrival stamp in their passport that is annotated “F-1” for Class and “D/S” for Until. “D/S” means duration of status. This document will be similar for all immigration statuses. The difference will be the Type. Likewise with the I-94 arrival record that immediately follows this document.
Most Recent I-94

Admission (I-94) Record Number: 12345678901
Most Recent Date of Entry: 2015 AUGUST 30
Class of Admission: F1
Admit Until Date: D/S

Details provided on the I-94 Information form:

Last/Surname: DUCK
First (Given) Name: DONALD
Birth Date: 1934 JUN 9
Passport Number: E123456
Country of Issuance: INDIA

For more information, visit the CBP website at www.cbp.gov.
ICE Form I-20 (3/31/2018)

Page 1 of 2
<table>
<thead>
<tr>
<th>SEVIS ID: NO(S) (F-1)</th>
<th>NAME:</th>
</tr>
</thead>
<tbody>
<tr>
<td>EMPLOYMENT AUTHORIZATION</td>
<td></td>
</tr>
<tr>
<td>EMPLOYMENT STATUS</td>
<td>TYPE</td>
</tr>
<tr>
<td>EMPLOYMENT START DATE</td>
<td>EMPLOYMENT END DATE</td>
</tr>
<tr>
<td>EMPLOYER NAME</td>
<td>EMPLOYER LOCATION</td>
</tr>
<tr>
<td>COMMENTS</td>
<td></td>
</tr>
</tbody>
</table>

<p>| CHANGE OF STATUS/CAP-GAP EXTENSION | |</p>
<table>
<thead>
<tr>
<th>REQUESTED VISA TYPE</th>
<th>REQUEST/PETITION STATUS</th>
<th>RECEIPT NUMBER</th>
<th>BENEFIT START DATE/REQUEST DATE</th>
</tr>
</thead>
</table>

| EVENT HISTORY | |
| EVENT NAME | EVENT DATE |

| OTHER AUTHORIZATIONS | |
| AUTHORIZATION | START DATE | END DATE |

<p>| TRAVEL ENDORSEMENT | |
| This page when properly endorsed, may be used for reentry of the student to attend the same school after a temporary absence from the United States. Each certification signature is valid for one year. |</p>
<table>
<thead>
<tr>
<th>SCHOOL OFFICIAL</th>
<th>TITLE</th>
<th>SIGNATURE</th>
<th>DATE ISSUED</th>
<th>PLACE ISSUED</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Sample Student I-20 with OPT employment authorization, page 1 of 2**

**Department of Homeland Security**

**U.S. Immigration and Customs Enforcement**

**I-20, Certificate of Eligibility for Nonimmigrant Student Status**

**SEVIS ID:** N0000000

**SURNAME/PRIMARY NAME:**

**PREFERRED NAME:**

**COUNTRY OF BIRTH:**

**DATE OF BIRTH:**

**FORM ISSUE REASON:**

**CONTINUED ATTENDANCE:**

**CLASS:**

**GIVEN NAME:**

**PASSPORT NAME:**

**COUNTRY OF CITIZENSHIP:**

**ADMISSION NUMBER:**

**ACADEMIC AND LANGUAGE:**

**SCHOOL INFORMATION**

**SCHOOL NAME:** University of Alaska Fairbanks

**SCHOOL ADDRESS:**

**SCHOOL OFFICIAL TO CONTACT UPON ARRIVAL:**

**SCHOOL CODE AND APPROVAL DATE:** ANC214F01070000

**30 JANUARY 2003**

**PROGRAM OF STUDY**

**EDUCATION LEVEL:**

**MAJOR 1:**

**MAJOR 2:**

**NORMAL PROGRAM LENGTH:** 60 Months

**PROGRAM ENGLISH PROFICIENCY:**

**ENGLISH PROFICIENCY NOTES:**

**PROGRAM START DATE:** 20 JANUARY 2011

**PROGRAM END DATE:** 20 SEPTEMBER 2015

**FINANCIALS**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>MAJOR 1</th>
<th>MAJOR 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuition and Fees</td>
<td>$ 15,185</td>
<td></td>
</tr>
<tr>
<td>Living Expenses</td>
<td>$ 13,650</td>
<td></td>
</tr>
<tr>
<td>Expenses of Dependents (0)</td>
<td></td>
<td>$ 29,168</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$ 28,835</td>
<td>$ 29,168</td>
</tr>
</tbody>
</table>

**STUDENT'S FUNDING FOR: 9 MONTHS**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>MAJOR 1</th>
<th>MAJOR 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Funds</td>
<td></td>
<td>$ 0</td>
</tr>
<tr>
<td>Grad Fellowship</td>
<td></td>
<td>$ 29,168</td>
</tr>
<tr>
<td>Funds From Another Source</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>On-Campus Employment</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$ 28,835</td>
<td>$ 29,168</td>
</tr>
</tbody>
</table>

**REMARKS**

See page 2 for OPT authorization data.

**SCHOOL ATTESTATION**

I certify under penalty of perjury that all information provided above was correct before I signed this form and is true and correct. I executed this form in the United States after review and evaluation in the United States by me or other officials of the school of the student's application, transcripts, or other records of courses taken and proof of financial responsibility, which were received at the school prior to the execution of this form. The school has determined that the above named student's qualifications meet all standards for admission to the school and the student will be required to pursue a full program of study as defined by 8 CFR 214.20(f)(3). I am a designated school official of the above named school and am authorized to issue this form.

**SIGNATURE OF:** Carol Nolz, Associate Director, Immigration Compliance

**DATE ISSUED:** 30 SEPTEMBER 2015

**PLACE ISSUED:** Fairbanks, AK

**STUDENT ATTESTATION**

I have read and agreed to comply with the terms and conditions of my admission and those of any extension of stay. I certify that all information provided on this form is true and correct to the best of my knowledge. I certify that I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full program of study at the school named above. I also authorize the named school to release any information from my records needed by DHS pursuant to 8 CFR 214.3(g) to determine my nonimmigrant status. Parent or guardian, and student, must sign if student is under 18.

**SIGNATURE:**

**DATE:**

**NAME OF PARENT OR GUARDIAN:**

**SIGNATURE:**

**ADDRESS (city/state or province/country):**

**DATE:**

ICE Form I-20 (3/31/2018)
Sample Student I-20 with OPT employment authorization, page 2 of 2

<table>
<thead>
<tr>
<th>SEVIS ID: NO0 [REDACTED] (F-1)</th>
<th>NAME: [REDACTED]</th>
</tr>
</thead>
</table>

**EMPLOYMENT AUTHORIZATION**

<table>
<thead>
<tr>
<th>EMPLOYMENT STATUS</th>
<th>TYPE</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPROVED - FULL TIME</td>
<td>POST-COMPLETION OPT</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EMPLOYMENT START DATE</th>
<th>EMPLOYMENT END DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 OCTOBER 2015</td>
<td>30 SEPTEMBER 2016</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EMPLOYER NAME</th>
<th>EMPLOYER LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The student has met the 1 full academic year requirement.

**COMMENTS**

Recommend one year Optional Practical Training employment authorization in the field of [REDACTED] beginning 10/01/2015 or date of adjudication whichever is later.

**CHANGE OF STATUS/CAP-GAP EXTENSION**

<table>
<thead>
<tr>
<th>REQUESTED VISA TYPE</th>
<th>REQUEST/PETITION STATUS</th>
<th>RECEIPT NUMBER</th>
<th>BENEFIT START DATE/REQUEST DATE</th>
</tr>
</thead>
</table>

**EVENT HISTORY**

<table>
<thead>
<tr>
<th>EVENT NAME</th>
<th>EVENT DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>registration</td>
<td>10 FEBRUARY 2015</td>
</tr>
</tbody>
</table>

**OTHER AUTHORIZATIONS**

<table>
<thead>
<tr>
<th>AUTHORIZATION</th>
<th>START DATE</th>
<th>END DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPT Approval for Post-Completion OPT</td>
<td>01 OCTOBER 2015</td>
<td>30 SEPTEMBER 2016</td>
</tr>
</tbody>
</table>

**TRAVEL ENDORSEMENT**

This page when properly endorsed, may be used for reentry of the student to attend the same school after a temporary absence from the United States. Each certification signature is valid for one year.

<table>
<thead>
<tr>
<th>SCHOOL OFFICIAL</th>
<th>TITLE</th>
<th>SIGNATURE</th>
<th>DATE ISSUED</th>
<th>PLACE ISSUED</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Note: Students with the OPT STEM extension will receive a new card annotated with the STEM extension.
J-1 EXCHANGE VISITORS

Categories:
Professor         Research Scholar       Student
Short-term Scholar Student Intern

Employment: All categories with the exception of Student are authorized employment with the program sponsor issuing the Department of State form DS2019. Dependents of J-1 visa holders may apply to immigration for employment authorization. They may not work until the Employment Authorization card is received.

Students are authorized on-campus employment during the authorized program dates with a letter of authorization from the DOS program sponsor Responsible Officer. Employment is limited to 20 hours per week while school is in session. Full-time employment authorized when school is not in session, i.e., winter, spring and summer vacation periods.

Students may be authorized off-campus employment with a specific employer, Academic Training, by the Responsible Officer. The DS2019 must be reissued to annotate the authorized academic training and the Responsible Officer must provide a letter of authorization to the student specifying the employer, authorized employment dates and full- or part-time employment. The academic training may be authorized for up to 18 months but may not exceed the duration of the academic program period.

Tax withholding:
FICA: Scholars: Exempt from FICA (Medicare and Social Security) tax for the first two calendar years present in the U.S. Note: Any portion of a calendar year counts as a full calendar year, i.e., an individual arriving in the U.S. in December loses one full year for that month.
Students: Exempt from FICA (Medicare and Social Security) tax for the first five calendar years present in the U.S. Note: Any portion of a calendar year counts as a full calendar year, i.e., an individual arriving in the U.S. in December loses one full year for that month.

Federal Income Tax: Scholars: J-1 Exchange Visitors are considered non-resident aliens for two of the previous six calendar years of presence in the U.S. and for the third year if they leave before the 183rd day of presence (calculation of substantial presence). During that period, IRS forms W-4 must be completed as Single, one exemption and enter “NRA” on line 6 of the W-4.
Students are considered non-resident aliens for the first five calendar years of presence in the U.S. and for the sixth year if they leave before the 183rd day of presence (calculation of substantial presence). During that period, IRS forms W-4 must be completed as Single, one exemption and enter “NRA” on line 6 of the W-4.

Tax Treaty Benefits: Participants in all categories from countries with which the U.S. has an income tax treaty may be exempt from U.S. federal income tax withholding. To claim exemption from withholding, they must complete and submit IRS form 8233 and the related attachment letter to the designated campus employee. The campus
employee must certify the form and submit the form 8233 and attachment letter to the IRS within five days of receipt from individuals requesting benefits. A copy of the certified form must be returned to them. See IRS Publication 519 for a listing of countries that have tax treaties with the U.S. See Appendix B for procedures to claim the exemption. NOTE: to be eligible for tax treaty benefits, the visitor’s entry to the U.S. must have been in J-1 status. Visitors who have received a change of status to J-1 from any other category, including J-2, and who have not left the U.S. and reentered in J-1 status are not eligible to claim tax treaty benefits.

Sample J-1 Visa with 2-year Home Residency Requirement

Number of Entries allowed

Visa Type

Two-Year Home Residency Requirement Statement

Expiration Date
Sample DS-2019
2-Year Home Residency Requirement

<table>
<thead>
<tr>
<th>Name</th>
<th>Mollie Moore</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Responsible Officer</td>
</tr>
<tr>
<td>Signature of Responsible Officer or Alternate Responsible Officer</td>
<td></td>
</tr>
</tbody>
</table>

**Preliminary Endorsement of Custodial or Immigration Officer Regarding Section 212(a) of the Immigration and Nationality Act and Form I-94, as amended (see Item 3 on page 3):**

1. [ ] Subject to the two-year residency requirement.
2. [ ] Subject to the two-year residency requirement based on
   A. Government financing and/or
   B. The Exchange Visitor Skills List and/or
   C. D-2/50 as amended

**Exchange Visitor Certification:** I have read and agree with the statement in Item 2 on page 3 of this document.

[Signature of Applicant]

Page 12
Sample DS-2019
amended for program start dates, No Home Residency requirement
H-1B SPECIALTY OCCUPATIONS and
O-1 PERSON OF EXTRAORDINARY ABILITY

Employment: Employer sponsored visa category. H-1B provides employment authorization for an individual to work for the employer applying for the H-1B authorization. Employment authorization is for the period specified on the immigration Form I-797 Notice of Action Approval Notice.

Tax withholding:
FICA: There is no exemption from FICA withholding. In the event of a change of status from F-1 to H-1B, FICA withholding begins the effective date of the change of status.
Federal Income Tax: Individuals are considered non-resident aliens only if they do not meet the substantial presence test. During the first year of presence non-resident withholding may apply, depending on the date of arrival.
Tax Treaty Benefits: Individuals from countries with which the U.S. has an income tax treaty may be exempt from U.S. federal income tax withholding. To claim exemption from withholding, they must complete and submit IRS form 8233 and the related attachment letter to the designated campus employee. The campus employee must certify the form and submit the form 8233 and attachment letter to the IRS within five days of receipt from individuals requesting benefits. A copy of the certified form must be returned to them. See IRS Publication 519 for a listing of countries that have tax treaties with the U.S. See Appendix B for procedures to claim the exemption. NOTE: generally to be eligible for tax treaty benefits, the individual’s entry to the U.S. must have been in H-1B status. Those who have received a change of status to H-1B from any other category, including H-4 (dependent), and who have not left the U.S. and reentered in H-1B status may not be eligible to claim tax treaty benefits. Exceptions may exist for individuals in the U.S. in F-1 or J-1 status who received a change of status to H-1B.

Documents for the O-1 status holder are similar to the H-1B. The only difference is the O-1 annotation rather than H-1B.
NOTE: A new visa is not required until the person travels outside the U.S. and wishes to return to UAF employment.
Sample I-797 Approval Notice – H-1B authorization
H-1B approval, visa to be issued through U.S. consulate abroad
TRADE NAFTA (TN) VISAHOLDERS
(Citizens of Canada and Mexico only)

Employment: Employer sponsored visa category. Canadians are not required to obtain a visa, Mexicans must obtain a TN visa in their passports.

Tax withholding:
FICA: There is no exemption from FICA withholding.

Federal Income Tax: Individuals are considered non-resident aliens only if they do not meet the substantial presence test. During the first year of presence non-resident withholding may apply, depending on the date of arrival.
Tax Treaty Benefits: See H-1B section.

Immigration documents include either the I-94 with the TN annotation for the initial approval or the I-797 approval notice for extensions filed with the USCIS service center rather than having the extension processed when the employee traveled outside the U.S.
PERMANENT RESIDENTS

Employment: Employment is authorized while petition is pending only if requested, granted and the authorization card received. After the PR adjustment of status is approved, unconditional employment is authorized.

Duration of status: Permanent residents do not lose status at the expiration of the authorization card. Employment may continue after the card expires. Expiration affects re-entry to the U.S. after foreign travel. An expired PR card cannot be used to meet I-9 documentation requirements.

The most current version, introduced in 2010 is actually green again.

Previous versions were pink with the picture required to show the full right ear.

PR Renewals: [https://www.uscis.gov/green-card/after-green-card-granted/renew-green-card](https://www.uscis.gov/green-card/after-green-card-granted/renew-green-card). Other than conditional permanent residency, generally granted in the case of marriage to a U.S. citizen, the PR or “green card” is issued for a period of 10 years under U.S. immigration regulations in place in 2016. Conditional PRs are granted for two years. The recipient must apply to have the conditions removed, after which the authorized period should be 10 years.

Renewals may be filed up to 6 months in advance of the expiration date to facilitate re-entry to the U.S. following foreign travel as well as employment authorization should the person wish to change employment or apply for other benefits in the U.S.

They need to be in possession of valid, unexpired foreign passports at all times.
REFUGEES AND ASYLEES

Eligibility for status: Anyone who has been persecuted or has a well-founded fear of persecution in his or her home country “on account of race, religion, nationality, membership in a particular social group or political opinion.” INA 101(a)(42)(A); 8CFR 208. An application for adjustment of status to permanent resident may be filed one year after the approval of asylee status is received.

Study: Eligible to study, but may not change status unless he or she also holds a valid nonimmigrant visa that allows a change of status. Also eligible to study with asylum application approval notice.

Employment: Must request work authorization from USCIS. They may apply by filing form I-765 after their application for asylum status has been pending for 180 days or if the application has been approved.

Documentation: Admissions stamp in passport, United Nations travel document, U.S. refugee travel document, or I-94 card noted with refugee status. I-94 may include work authorization.
REGULATORY INFORMATION

I-9 Requirements

Substantial Presence Test
IRS nonresident alien withholding table

Social Security Administration
Social Security Number Applications
Employer requirements to obtain employee SSNs
FICA exemption tax code section

Employment Authorization of Foreign Nationals

Scholarship Withholding

Resources
I-9 Requirements

Completion of the form I-9 (Employment Eligibility Verification Form) and new hire paperwork is the responsibility of the unit-designated payroll and personnel staff working in conjunction with the UAF HR Office.

The U.S. Citizenship and Immigration Services publication, M-274 Guidance for Completing Form I-9 is available at https://www.uscis.gov/sites/default/files/files/form/m-274.pdf

Information about documentation requirements is available in the publication and may be found through the search function in the document. It includes how to complete the I-9 in the case of expiring H-1B authorizations, when the extension petition has been filed as well as other specific instructions for employees in the F-1, J-1 and other nonimmigrant statuses.

Note: as of February, 2016 some of the document examples are outdated. Current examples are included in this Immigration 101 resource.
SUBSTANTIAL PRESENCE TEST

The Substantial Presence Test (SPT) is used to determine the U.S. residency status of foreign visitors (non-resident aliens) in the U.S. The outcome of the test determines how U.S. income tax withholding is performed. The UA system uses the Glacier On-line Tax Compliance system to determine the SPT (http://www.online-tax.net). The system can also verify eligibility for tax treaty benefits.

To be considered a resident alien for U.S. income tax purposes, individuals must be present in the U.S. at least 31 days within the current calendar year and a cumulative 183 days over the current and previous two years. The calculation is:

Number of days present in the U.S. during the current year: XXX
Number of days present in the U.S. during the last calendar year: XXX x 1/3
Number of days present in the U.S. during calendar year 2 years prior: XXX x 1/6

If the total equals 183 or greater, individuals are considered resident aliens. If the total is less than 183, they are non-resident aliens for U.S. tax purpose.

**Example 1:** J-1 Professor arrived May 10, 2004 to teach a Summer term course and will remain through the Fall semester. He was present in 2002 as a J-2 dependent for the entire year.

Calculations: 2004 # of days present: 235 x 0 = 0 (exempt from counting)
2003 not present in U.S.
2002 # of days present 365 x 0 = 0 (exempt from counting)
NRA for tax purposes.

**Example 2:** J-1 Researcher arrived May 10, 2004 to teach a Summer term course and will remain through the Fall semester. He arrived on December 30, 2002 as a J-2 dependent for the entire year was departed June 1, 2003.

Calculations: 2004 # of days present: 235 x 1 = 235 – 2 yrs in previous 6 used
2003 # of days present 152 x 0 = 0 (exempt from counting)
2002 # of days present 2 x 0 = 0 (exempt from counting)
Total 235
Resident alien for tax purposes in 2004 since he will remain through December 31.

**Example 3:** F-1 Student arrives December 30, 2002 to begin an academic program with an expected completion date of December, 2007. Student leaves U.S. for summer vacation on June 10, 2003, returns on a B (visitors) visa on June 15, leaves U.S. July 31, returns on F-1 to resume classes September 1, 2003 and remains in U.S.

Calculations: 2004 # of days present: 364 x 0 = 0 (exempt from counting)
2003 # of days present 45 x 1/3 = 15 (time in U.S. in B status)
2002 # of days present 2 x 0 = 0 (exempt from counting)
Total 15
NRA for tax purposes in 2004, note that 2002 counts as one year of the 5-year exemption period.
See IRS Publication 15 (Circular E), section 9. Withholding From Employees’ Wages, Income Tax Withholding, Withholding on nonresident aliens for applicable income tax withholding elections and amounts for completing the IRS form W-4. Note: if a W-4 is received and is incorrectly completed, the default withholding is Single with no exemptions.

People entering the U.S. in the F- visa category to be full-time or commuter students, or the dependents of students are exempt from calculating days towards substantial presence for their first 5 calendar years in the U.S. During that time, they are considered non-resident aliens for U.S. income tax purposes. Days in the U.S. in the F-2 (dependent) category count towards the five-year maximum exemption from SPT calculation.

People entering the U.S. in any of the J- visa categories are exempt from calculating days towards substantial presence for two of the last six calendar years in the U.S. During that time, they are considered non-resident aliens for U.S. income tax purposes. Days in the U.S. in the J-2 (dependent) category count towards the two-year exemption from SPT calculation.

See IRS Publication 515, Foreign Persons, Resident Alien section and Publication 519, Nonresident aliens, Substantial presence test section.
**SOCIAL SECURITY**

**Social Security Numbers:**

**Employers Responsibility:** Per IRS Publication 15 (Circular E) section 4, Employers are required to obtain each employee's name and SSN and to enter them on Form W-2. This requirement also applies to resident and nonresident alien employees. Although not required, it is advisable to retain a copy of the social security card for verification of the name spelling and number in case of discrepancy with SSA records. If the correct name and social security number are not provided on form W-2, employers may be assessed penalties unless they can show reasonable cause for the omission or error. See IRS Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs. **NOTE:** ITINs are not valid numbers for employees.

Guidance issued by the Social Security Administration regarding the eligibility for U.S. social security numbers follows. Please note that the guidance states that one of the documents required is a letter from the program sponsor for people in F-1 and J-1 status. The UAF International Programs, Immigration Compliance staff are the designated program sponsors for letter issuance.

**NOTE:** Individuals who are not eligible for social security numbers and who wish to apply for an Alaska drivers license or state identification card must request and receive a social security denial letter before applying for the license or permit. Immigration Compliance staff will provide a letter to the Social Security office requesting the denial letter for the person.
International Students and Social Security Numbers

Are you temporarily in the United States to attend a college, language, vocational, or nonacademic school with a nonimmigrant F-1, M-1, or J-1 student classification? Your school may ask you for your Social Security number. Some colleges and schools use Social Security numbers as student identification numbers. If you don’t have a Social Security number, the college or school should be able to give you another identification number.

Social Security numbers generally are assigned to people who are authorized to work in the United States. Social Security numbers are used to report your wages to the government and to determine eligibility for Social Security benefits. Social Security will not assign a number to you just to enroll in a college or school.

What do I have to do to work in the United States?

If you want to get a job on campus, you should contact your designated school official for international students. This official can tell you if you're eligible to work on campus and can give you information about available jobs. Also, your school may approve certain limited off-campus employment, as permitted under Department of Homeland Security (DHS) regulations. If your school has authorized you to work either on or off campus, and you meet Social Security’s eligibility requirements described in the next section, you can get a Social Security number.

How do I apply for a Social Security number?

In general, only noncitizens who have permission to work from the DHS can apply for a Social Security number. We suggest you wait 48 hours after reporting to your school before you apply for a Social Security number. Waiting will help ensure we can verify your immigration status with the DHS.

To apply for a Social Security number at your local Social Security office:

- Complete an application for a Social Security card; and
- Show us documents proving your:
  - Work-authorized immigration status;
  - Age; and
  - Identity.

Immigration status

To prove your immigration status, you must show us a current admission stamp in your unexpired foreign passport and Arrival/Departure Record (Form I-94), if available. If you're an F-1 or M-1 student, you must also show us your Certificate of Eligibility for Nonimmigrant Student Status (Form I-20). If you're a J-1 exchange visitor, you must show us your Certificate of Eligibility for Exchange Visitor Status (Form DS-2019).

Work eligibility

If you're an F-1 student and eligible to work on campus, you must provide a letter from your designated school official that

- Identifies you;
- Confirms your current school status; and
- Identifies your employer and the type of work you are, or will be, doing.

We also need to see evidence of that employment, such as a recent pay slip or a letter from your employer. Your supervisor must sign and date the employment letter. This letter must describe

- Your job;
- Your employment start date;
- The number of hours you are, or will be, working; and
- Your supervisor's name and telephone number.

If you're an F-1 student authorized to work in curricular practical training (CPT), you must provide us your Form I-20 with the employment page completed and signed by your school's designated official.

www.socialsecurity.gov

[over]

International Students And

If you're an F-1 or M-1 student and have a work permit [Form I-766] from the DHS, you must present it.

If you're a J-1 student, student intern, or international visitor, you must provide a letter from your sponsor. The letter should be on sponsor letterhead with an original signature that authorizes your employment.

We cannot process your application if:
- Your on-campus or CPT work begins more than 30 days from your application date; or
- The employment start date on your work permit from the DHS [Form I-766] is a future date.

Age
You must present your foreign birth certificate if you have it or can get it within 10 business days. If you can't present your foreign birth certificate, we can consider other documents, such as your passport or a document issued by the DHS, as evidence of your age.

Identity
We can only accept certain documents as proof of identity. An acceptable document must be current (not expired) and show your name, identifying information, and preferably, a recent photograph. Social Security will ask to see your current U.S. immigration documents, such as a current admission stamp in your unexpired foreign passport and Arrival/Departure Record [Form I-94], if available.

All documents must be either originals or copies certified by the issuing agency. We cannot accept photocopies or notarized copies of documents. We also cannot accept a receipt showing you applied for the document. We may use one document for two purposes. For example, we may use your admission stamp in the unexpired foreign passport as proof of both work eligibility and identity.

Do I need a Social Security number before I start working?

We don't require you to have a Social Security number before you start work. However, the Internal Revenue Service requires employers to report wages using a Social Security number. While you wait for your Social Security number, your employer can use a letter from us stating that you applied for a number. Your employer may use your immigration documents as proof of your authorization to work in the United States. Employers can find more information on the Internet at www.socialsecurity.gov/employer/hiring.htm.

Contacting Social Security
Visit www.socialsecurity.gov anytime to apply for benefits, open a my Social Security account, find publications, and get answers to frequently asked questions. Or, call us toll-free at 1-800-772-1213 (for the deaf or hard of hearing, call our TTY number, 1-800-325-0778). We can answer case-specific questions from 7 a.m. to 7 p.m., Monday through Friday. Generally, you'll have a shorter wait time if you call after Tuesday. We treat all calls confidentially. We also want to make sure you receive accurate and courteous service, so a Second Social Security representative monitors some telephone calls. We can provide general information by automated phone service 24 hours a day. And, remember, our website, www.socialsecurity.gov, is available to you anytime and anywhere!
Employer Responsibilities When Hiring Foreign Workers

To help ensure that only those who should receive a number do so, Social Security has taken extra steps to ensure the integrity of Social Security numbers. The changes to the way Social Security assigns numbers and issues cards may cause a delay of several weeks or months in receiving a number. This fact sheet addresses employer responsibilities when hiring foreign workers (e.g., students or cultural exchange visitors) who have applied for and are waiting to receive a Social Security number and card. Note that the employee may work while the Social Security number application is being processed.

1. **What causes delays when foreign workers apply for Social Security numbers?**

   When foreign workers apply for Social Security numbers, Social Security verifies their documents directly with the Department of Homeland Security (DHS). Most applications are verified immediately, but there can be delays. Social Security understands that this process may affect companies who hire foreign workers, but direct verification from DHS is vital to ensuring the integrity of the Social Security number.

2. **What are an employer's responsibilities when hiring foreign workers who don't have Social Security numbers?**

   Advise workers that they are required to apply for a Social Security number and card. If a worker applied for but has not yet received a Social Security number, you should get the following information as complete as possible: The worker's full name, address, date of birth, place of birth, father's full name, mother's full maiden name, gender and the date he or she applied for a Social Security number.

3. **What if the worker doesn't have a Social Security number when wage reports (Forms W-2) are due to Social Security?**

   Paper Filers: If the worker applied for a card but didn't receive the number in time for filing, enter "Applied For" in Box a. (Reference: IRS Instructions for Forms W-2/W-3)

   Electronic Filers: If the worker applied for a card but didn't receive the number in time for filing, enter all zeros in the field for the Social Security number. (Reference: Specifications for Filing Forms W-2 and W-2c Electronically)

   Remember to instruct the worker to tell you the number and the exact name printed on the card, when he or she receives it.

4. **My foreign worker received his or her Social Security number after I filed my wage report. What do I do?**
When you receive the worker's Social Security number, file Form W-2c (Corrected Wage and Tax Statement), to show the worker's number. Go to How to File Correction Forms for instructions on filing W-2c’s.

Reference: 26 CFR 31.6011

http://www.socialsecurity.gov/employer/hiring.htm 02/2016
FICA (Social Security and Medicare) TAX

FICA Tax Exemptions: The basis for the F-1 and J-1 FICA tax exemptions are in Internal Revenue Code Title 26, Subtitle C, Chapter 21, Subchapter C, Section 3121 (IRC Section 3121 (b)(19)).

INTERNAL REVENUE CODE TITLE 26, Subtitle C, CHAPTER 21, Subchapter C
Sec. 3121

IRC Section 3121 (b)(19)

(b) Employment
For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include -

Sections (1)-(18) omitted

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F), (J), or (M), as the case may be;

http://www.fourmilab.to/uscode/26usc/www/t26-C-21-C-3121.html
SCHOLARSHIP WITHHOLDING

Scholarship and fellowship grant awards may be subject to U.S. federal income tax withholding. See IRS Publication 515.

Students enrolled in a degree program receiving qualified scholarship awards (any amount to be used for (1) tuition and fees required for enrollment or attendance at an educational organization and (2) fees, books supplies and equipment required for courses of instruction at the educational organization) are not reportable or subject to withholding.

Any payments other than the above (nonqualified scholarship awards) are subject to 14% withholding for nonresident aliens present in the U.S. in F-1, J-1, M-1 and Q-1 status. These may include room and board, travel and cash payments for “spending money.”

Tax treaty benefits may be used if the recipient’s home country has a tax treaty with the U.S. that includes payments for scholarship payments.

The amounts are to be reported on IRS Form 1042S. Forms 1042S are required to be mailed by March 15 of the year following the calendar year during which the payments were made.

INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS

Individual Taxpayer Identification Numbers (ITIN) are needed for tax reporting purposes for non-payroll/non-employment related payments such as

- Non-qualified scholarships
- Vendor/accounts payable payments, i.e., honorariums, certain royalty payments. See IRS Publication 515. Table 1 contains the listing of withholding rates by country and type of income.

To apply for ITINs, individuals must file an IRS Form W-7 with the current tax return, unless reason a, f, or h are selected. These are known as the “SEVIS school exceptions.” The application must be filed through the IRS service in Austin, TX. The school SEVIS-designated officials must submit a certifying letter with the form W-7 along with specific supporting documentation.
RESOURCES

WEBSITES:
UAF Office of International Programs website:  http://www.uaf.edu/oip/info-departments/

IRS website for forms and publications:  http://www.irs.gov/formspubs/
You may select from forms and publications by date or number.

University of Alaska statewide system website:  http://www.alaska.edu/hr/forms/hr_nraforms/
Forms and information UA has available for departmental use.  This includes tax treaty summaries for payroll and scholarship payments.

Carol Holz
Associate Director, Immigration Compliance
University of Alaska Fairbanks
Office of International Programs
P.O. Box 757760
Fairbanks, AK  99775-7760
(907)474-7677
carol.holz@uaf.edu

Joanna Cruzan
International Scholar/Student Coordinator – working primarily with scholars in J-1, H-1B, O-1 and TN statuses
University of Alaska Fairbanks
Office of International Programs
P.O. Box 757760
Fairbanks, AK  99775-7760
(907)474-77157
jgcruzan@alaska.edu

Reija Shnoro
International Student/Scholar Coordinator – working primarily with students in F-1 status
University of Alaska Fairbanks
Office of International Programs
P.O. Box 757760
Fairbanks, AK  99775-7760
(907)474-7583
rsshnoro@alaska.edu