



Memorandum from the Office of the Inspector General

January 14, 2020

Wilson Taylor III

REQUEST FOR FINAL ACTION – EVALUATION 2019-15633 – COMPLIANCE WITH H-1B VISA REGULATIONS

A foreign national¹ wishing to work in the United States (U.S.) must have either a Permanent Resident Card (also known as a Green Card), an *Employment Authorization Document* (work permit), or an employment-related visa. There are several types of work visas and each of them have specific eligibility criteria and requirements. The H-1B visa is used to fill vacancies when there is a shortage of qualified workers in the country. Typically, the maximum length of time that an individual can be employed through an H-1B visa is 6 years; however, extensions can be granted in certain circumstances. Due to the length of service of some non-U.S. citizens at the Tennessee Valley Authority (TVA), we initiated an evaluation of TVA's compliance with H-1B visa regulations. The objective of our evaluation was to determine if TVA employees and contractor employees who are non-U.S. citizens met selected criteria of H-1B regulations. We limited our scope to H-1B employees and contractor employees who worked for TVA between January 31, 2017, and January 31, 2019.

We identified 9 contractor employees who were H-1B visa nonimmigrants² during the 2-year period. We determined the 9 contractor employees we identified as being H-1B nonimmigrants met selected criteria of the visa regulations. However, we could not confirm the actual number of H-1B visa nonimmigrants or foreign nationals who worked at TVA during the scope of our evaluation because the data in citizenship and visa fields in TVA's Human Resources (HR) system was determined to be unreliable. Additionally, we identified an opportunity for improvement related to verifying documentation supporting nonimmigrant employment eligibility of contractor employees.

We recommend the Vice President, People First Solution Center, take actions to (1) implement a process to ensure the accuracy and completeness of the citizenship and visa data for all personnel in TVA's HR system and (2) require TVA HR to routinely audit, validate, or otherwise verify nonimmigrant employment eligibility documentation of contractor employees.

In response to our draft report, TVA management provided planned actions to address the recommendations by (1) evaluating their current systems, processes, and policies to identify opportunities to improve the accuracy of database information provided for the database population; and (2) working with labor suppliers annually to affirm they

¹ A foreign national is a person without U.S. citizenship or nationality.

² Nonimmigrants are foreign nationals admitted to the U.S. for a specific, temporary period of time.

understand their responsibility to maintain the eligibility of contractor employees to work in the U.S. See the Appendix for TVA management's complete response.

BACKGROUND

A foreign national wishing to work in the U.S. must have either a Permanent Resident Card (also known as a Green Card), an *Employment Authorization Document* (work permit), or an employment-related visa. There are several types of work visas and each of them have specific eligibility criteria and requirements. TVA's workforce includes employees and contractor employees who work under a variety of employment-related visas such as H-1B, L-1B,³ and TN⁴ visas. H-1B visa nonimmigrants are used to fill vacancies when there is a shortage of qualified workers. In order for positions to be filled by H-1B visa nonimmigrants, the job must fall into one of three categories: (1) position requires a Bachelor's degree or higher, (2) degree requirement for the job is common for the industry, or (3) job is so complex or unique that it can only be performed by an individual with a degree.

The Immigration Reform and Control Act of 1986; Title 20, Code of Federal Regulations (CFR), Part 655, Subparts H and I, Temporary Employment of Foreign Workers in the U.S.; and U.S. Citizenship and Immigration Services (USCIS) guidelines each set out various requirements for obtaining and processing H-1B visas including:

- *Labor Condition Application* – A prospective H-1B employer files this document with the Department of Labor when it seeks to employ nonimmigrant workers at a specific job occupation in an area of intended employment for not more than 3 years.
- *Petition for a Nonimmigrant Worker* (and extensions, where applicable) – Petitioners use this form to file on behalf of a nonimmigrant worker to come to the U.S. temporarily in order to perform services or labor, or to receive training, as a nonimmigrant worker. Petitioners may also use this form to request an extension of stay.
- *Notice of Action* – This form indicates approval of the petition for a nonimmigrant worker and is used to communicate with applicants/petitioners or convey an immigration benefit.
- *Employment Eligibility Verification* – This form is used to verify the identity and employment authorization of individuals hired for employment in the U.S. All U.S. employers must ensure proper completion for each individual they hire for employment, including citizens and noncitizens.

TVA transfers the responsibility of managing H-1B compliance to contractor employees who choose to employ H-1B visa nonimmigrants via Standard Programs and Processes (SPP) 11.106, *Contingent Labor Onboarding and Offboarding*, which states:

³ The L-1B classification enables a U.S. employer to transfer a professional employee with specialized knowledge from one of its affiliated foreign offices to one of its offices in the U.S.

⁴ The TN classification permits qualified Canadian and Mexican citizens to seek temporary entry into the U.S. to engage in business activities at a professional level.

Suppliers that provide contractors to TVA are responsible for ensuring that, prior to the start of work, these individuals meet U.S. Citizenship and Immigration Services (USCIS) requirements to work in the U.S. as defined by the contract. Integral to this requirement, the supplier must acquire and maintain appropriate documentation and obtain all contractually required security clearances. This includes but is not limited to, requiring completion of USCIS Form I-9 and verification of documentation.

According to the USCIS, H-1B nonimmigrants may be admitted for a period of up to 3 years, which can be extended, but generally does not exceed a total of 6 years.⁵ Due to the length of service of some non-U.S. citizens at TVA, we initiated an evaluation of TVA's compliance with H-1B visa regulations.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our evaluation was to determine if TVA employees and contractor employees who are non-U.S. citizens met selected criteria of H-1B regulations. The scope of our review was limited to TVA employees and contractor employees working under an H-1B visa from January 31, 2017, through January 31, 2019. To achieve our objective, we:

- Conducted interviews with TVA HR personnel and reviewed pertinent SPPs to gain an understanding of TVA's process related to TVA employees and contractor employees working under an H-1B visa.
 - TVA-SPP-11.106, *Contingent Labor Onboarding and Offboarding*
 - TVA-SPP-11.2.0, *Filling Vacant Positions*
 - Talent Management SPP-11.2.3, *Citizenship Requirements*
- Reviewed 20 CFR, Part 655, Subparts H and I, Temporary Employment of Foreign Workers in the U.S., to gain an understanding of H-1B regulations.
- Identified 71 employees and contractor employees who were potential H-1B visa nonimmigrants.
 - Fifty-eight (26 employees and 32 contractor employees) were identified in TVA's HR system as having a citizenship country other than the U.S.
 - Thirteen contractor employees were identified by HR based on their working knowledge.
- Attempted to obtain visa documentation for the 26 TVA employees to determine if they were H1-B visa nonimmigrants. However, TVA does not maintain source documentation related to employee visa status.⁶

⁵ The American Competitiveness in the 21st Century Act allows H-1B visas to be extended beyond the 6-year limit.

⁶ These employees were recorded in TVA's HR system or the Enterprise Content Management system as either Green Card holders or Resident Alien Permit holders.

- Reviewed visa documentation for the 45 contractor employees to determine if they were active H-1B visa nonimmigrants.
- Tested H-1B visa nonimmigrants identified to determine if personnel met the following selected criteria as set out in the Immigration Reform and Control Act of 1986; 20 CFR, Part 655, Subparts H and I; and USCIS guidelines:
 - *Labor Condition Application* submitted by employer (Form ETA-9035/9035E).
 - *Petition for a Nonimmigrant Worker* submitted by employer (Form I-129) and extensions, where applicable.
 - *Notice of Action issuance* indicated approval of the petition for a nonimmigrant worker (Form I-797).
 - *Employment Eligibility Verification* completed by employer (Form I-9).
- Queried TVA's HR system for personnel with blank or "Not Indicated" citizenship status fields to determine the extent of missing citizenship data.

This evaluation was performed in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

FINDINGS

We identified 9 contractor employees who were H-1B visa nonimmigrants during the 2-year period. We determined the 9 contractor employees met selected criteria of the visa regulations. Specifically, for each identified H-1B visa holder, the vendor had (1) submitted a *Labor Condition Application* that had been approved; (2) filed a *Petition for a Nonimmigrant Worker* and extension, where applicable; (3) received a *Notice of Action* indicating approval of the petition; and (4) completed *Employment Eligibility Verifications* upon hiring the individual. However, we could not confirm the actual number of H-1B visa nonimmigrants or foreign nationals who worked at TVA because the data in citizenship and visa fields in TVA's HR system was determined to be unreliable.

We found citizenship and visa data fields in TVA's HR system (1) contained inaccurate data and (2) were not consistently completed. Our review of 58 individuals (26 employees and 32 contractor employees) identified as noncitizens in TVA's HR system found the following:

- One contractor employee was an H-1B visa nonimmigrant.
- Eight contractor employees were U.S. citizens.
- Twenty-three contractor employees held either Green Cards or other work-related visas.
- We could not verify the accuracy of the information related to the 26 TVA employees because TVA does not maintain visa documentation.

TVA HR provided an additional 13 names who they believed were H-1B visa contractor employees. Our review of the 13 contractor employees found 8 of the individuals were

H-1B visa nonimmigrants. The other 5 held either Green Cards or other work-related visas.

In total, we identified 9 contractor employees as H-1B visa nonimmigrants. Of the 9, none were listed as “H-1B” in TVA’s HR system visa field. Instead, in those fields, we found four of the nine were blank, four were listed as “other,” and one was listed as “MS.”⁷

As a result of identifying blank fields during our review, we queried TVA’s HR system for all individuals active between January 31, 2017, and January 31, 2019, with blanks or “Not Indicated” in the citizenship status fields and identified 27,969 records. The records included 27,622 contractor employees, 122 employees, and 225 persons of interest.⁸

Based on the unreliable data contained in TVA’s HR system, we could not readily determine the actual number of H-1B visa nonimmigrants or foreign nationals working at TVA.

OPPORTUNITY FOR IMPROVEMENT

During our evaluation, we identified an opportunity for improvement related to verifying documentation supporting nonimmigrant employment eligibility of contractor employees. TVA-SPP-11.106, *Contingent Labor Onboarding and Offboarding*, states:

Suppliers that provide contractors to TVA are responsible for ensuring that, prior to the start of work, these individuals meet United States Citizenship and Immigration Services (USCIS) requirements to work in the United States as defined by the contract. Integral to this requirement, the supplier must acquire and maintain appropriate documentation and obtain all contractually required security clearances.

However, TVA does not routinely audit, validate, or otherwise verify if contractor employees meet USCIS regulations.

Without periodically verifying documentation supporting nonimmigrant ongoing employment eligibility of contractor employees, TVA runs the risk of employing individuals who are not authorized to work in the U.S.

RECOMMENDATIONS

We recommend the Vice President, People First Solution Center, take actions to (1) implement a process to ensure the accuracy and completeness of the citizenship and visa data for all personnel in TVA’s HR system and (2) require TVA HR to routinely audit, validate, or otherwise verify nonimmigrant employment eligibility documentation of contractor employees.

⁷ According to an HR manager, TVA HR does not know what is meant by MS.

⁸ According to an HR manager, a person of interest is someone who only needs a badge or network access and not directly compensated by TVA.

TVA Management's Comments – In response to our draft report, TVA management stated they will (1) review their current processes to evaluate additional improvements that can be made regarding maintenance of citizenship data for personnel in the TVA HR system; (2) evaluate expanding their current biweekly audit process to ensure continued data accuracy; (3) in preparation for a new cloud-based HR system, evaluate their current systems, processes, and policies to identify opportunities to improve the accuracy of the information; and (4) work with labor suppliers annually to affirm they understand their responsibility to maintain the eligibility of contractor employees to work in the U.S. TVA management provided additional comments stating that they review visa documentation at the time of hiring to ensure eligibility of hiring and a recent review indicated data for 22 foreign nationals is included in TVA's HR system. See the Appendix for management's complete response.

Auditor's Response – We concur with TVA management's planned actions for the recommendations. However, in response to management's additional comments, while TVA's HR system does contain some additional information, TVA does not maintain visa documentation, which prevented us from verifying the accuracy of the data in the HR system.

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This report is for your review and final action. Your written comments, which addressed your management decision and actions planned or taken, have been included in the report. Please notify us when final action is complete. In accordance with the Inspector General Act of 1978, as amended, the Office of the Inspector General is required to report to Congress semiannually regarding evaluations that remain unresolved after 6 months from the date of report issuance.

If you have any questions or need additional information, please contact Samuel L. Ruble, Senior Auditor, Evaluations, at (865) 633-7384 or E. David Willis, Director, Evaluations at (865) 633-7376. We appreciate the courtesy and cooperation received from your staff during the evaluation.



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Assistant Inspector General
(Audits and Evaluations)

SLR:FAJ
Attachment

cc: (Attachment):
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OIG File No. 2019-15633

January 7, 2020

David P. Wheeler, WT 2C-K

RESPONSE TO REQUEST FOR COMMENTS – EVALUATION 2019-15633 – COMPLIANCE WITH H-1B REGULATIONS

This is in response to your memorandum dated November 20, 2019. First, let me thank your team for the professional manner in which this audit was conducted. After review of the draft evaluation, please see the following response to the recommendations and additional comments regarding compliance with H-1B regulations.

RECOMMENDATIONS

We recommend the Vice President, HR Operations Services and Ombudsman, take actions to (1) implement a process to ensure the accuracy and completeness of the citizenship and visa data for all personnel in TVA's HR system and (2) require TVA HR to routinely audit, validate, or otherwise verify nonimmigrant employment eligibility documentation of contractor employees.

RESPONSE

It is an inherent responsibility that a company ensure its workers are in the U.S. legally and have valid work visas. The role of ensuring that contractors are not working past their visa end date lies with the supplying company. Since TVA contracts state that all contractors must be qualified, suppliers have the responsibility for ensuring that current and new workers are and remain qualified to work in their job and in the U.S. Supply Chain, River & Resources Stewardship, and HR People First Solution Center management will work with labor suppliers annually to affirm they understand their responsibility to maintain their employees, who TVA is using as contractors, eligibility to work in the U.S.

ADDITIONAL COMMENTS

Recommendation 1:

(1) implement a process to ensure the accuracy and completeness of the citizenship and visa data for all personnel in TVA's HR system...

Response: Vice President, HR Operations Services and Ombudsman will review our processes to evaluate additional improvements which can be made regarding maintenance of citizenship data for personnel in the TVA HR System.

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4th Finding Bullet, page 4:

We could not verify the accuracy of the information related to the 26 TVA employees because TVA does not maintain visa documentation.

Response: HR Operations Services and Ombudsman reviews visa documentation at the time of hiring to ensure eligibility for hiring. Based on our review, the data for 22 of the 26 employees is included in the TVA HR system. We will review the remaining 4 to ensure documentation is included. We will evaluate expanding our current bi-weekly audit process to ensure continued data accuracy.

2nd Paragraph, Page 5:

As a result of identifying blank fields during our review, we queried TVA's HR system for all individuals active between January 31, 2017, and January 31, 2019, with blanks or "Not Indicated" in the citizenship status fields and identified 27,969 records. The records included 27,622 contractor employees, 122 employees, and 225 persons of interest.

Response: HR is currently evaluating a new cloud-based HR system. We will evaluate our current system, process, and policies to identify opportunities to improve the accuracy of the information provided for the referenced population of contractors, employees and persons of interest. In addition, we will evaluate expanding our current bi-weekly audit process on employee data to ensure accurate citizenship data.

Thank you for allowing me to provide these comments. If you need additional information, please let us know.



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