
To: AURA NSF Center Management and Human Resources

From: Deborah Gronet, Compliance Officer *DAG*

Date: November 7, 2018

Re: Allowability of short-term and long-term visa costs, Green Cards and other ancillary costs associated with immigration as well as passport costs

CC: Debbie Johnson, Chris Richardson, CAS Managers

Purpose: This memo will serve to address some recent questions about AURA's payment of visa and passport costs. It is not intended to comprehensively address all scenarios involving visa and passport costs.

Executive Summary and Action required

- **Short-term travel visa costs** incurred in conjunction with the recruitment of a new employee to perform research critical and necessary for the conduct of a Federal award in the U.S. (including visa renewal costs and attorneys' fees) are an allowable direct cost provided that (i) AURA policy covers the payment of such costs and (ii) other requirements are met.
- **Long term immigration visas** (to become a permanent U.S. resident) and all ancillary costs incurred to obtain such a visa (such as medical examination costs and attorneys' fees, for example) are unallowable since the purpose of the visa is not to perform work on a particular Federal award, but rather to become a permanent U.S. resident.
- **The cost of an Organización Internacional (OI) visa** (including any renewal costs) for the recruitment of a new employee or for an existing AURA employee transferred to Chile to perform work on a Federal award in Chile is a cost chargeable to a Federal award provided that (i) the payment of such costs is covered in AURA policy and (ii) other specified requirements are met.
- **Passport** costs are an unallowable cost. Since passports are not issued for a project specific purpose and can be used for multiple trips over the years that involve business or pleasure, the cost is unallowable.
- **Action Required:** All NSF Centers and Human Resources must observe the rules specified in this memo. Any approved unallowable costs must be charged to an unencumbered income source.

I. Explanation

A. Short-term Travel Visa Costs (U.S.)

- Uniform Guidance (“U.G.”) §200.463 “Recruiting Costs,” subsection (d) differentiates between short-term travel visas and longer-term immigration visas. It states that: “Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost” provided the requirements of 200.463 (d) are met.
- A short-term travel visa is defined in the U.G. as a visa “issued for a specific period and purpose,” that “can be clearly identified as directly connected to work performed on a Federal award.” The “Commentary to the U.G.” discusses the need to include short term travel visa costs under “recruitment” as an allowable cost in order for organizations to recruit individuals short-term to perform critical research on Federal awards.
- Under U.S. immigration law, a short-term travel visa is a nonimmigrant visa that is issued to a person with a permanent residence outside the United States, but who wishes to be in the U.S. on a temporary basis for tourism, medical treatment, business, temporary work or study, etc. Examples of allowable short-term travel visas in the U.S. include: H-1B, TN, E-3, O-1, J-1.
- UG §200.463 (d) states that for short-term travel visa costs to be directly charged to a Federal award, they must:
 - (i) Be critical and necessary for the conduct of the project;
 - (ii) Be allowable under the applicable cost principles;
 - (iii) Be consistent with the non-Federal entity’s cost accounting practices and non-Federal entity policy; and
 - (iv) Meet the definition of “direct cost” as described in the applicable cost principles.
- The renewal of a short-term visa for an employee to continue/complete work on a Federal award is allowable, since the purpose of the renewal is to permit the employee to complete the work that they were recruited to perform. If the visa is not renewed, AURA would be required to recruit a substitute employee to complete the work at an additional expense over and above the cost of renewing the visa.
- Attorneys’ fees incurred to obtain a short-term travel visa or its renewal as described here are an allowable cost.

B. Long-term Immigration Visas (U.S.)

- A long-term immigration visa is a visa issued to someone who wants to live permanently in the U.S. Examples of long-term immigration visas include: Forms I-140 (Alien petition to work in U.S. on permanent basis), and I-485 (application for Green Card to become permanent resident).
- The UG §200.463(d) directly states that long-term immigration visa costs are unallowable. Reasons for this include the following:
 - ♦ Unlike short-term travel visas, long-term immigration visas are not issued for a specific period and purpose that can be clearly identified as connected to work performed on a Federal award.
 - ♦ The purpose of a long-term Immigration Visa is not to perform work on a particular Federal award, but rather to become a permanent resident.
- Ancillary costs related to obtaining a long-term immigration visa such as, for example, attorneys’ fees incurred to obtain the visa and the cost of a medical exam to obtain a Green Card are unallowable because the cost of the long-term immigration visa is unallowable.

C. Chile: Official International (OI) Visas for new employees or for U.S. based AURA employees who work for AURA in Chile for a time period that exceeds 180 days

- Pursuant to Chilean legislation enacted for the benefit of AURA to operate an observatory in Chile, non-Chilean citizens who work for AURA in Chile (whether they are newly recruited or an existing AURA employee who has been recruited to work in Chile) must obtain an OI visa (no exceptions).

An OI visa is a short-term work and residence visa that permits non-Chilean citizens to perform work in Chile beyond a 180-day period and for up to two years. An OI visa may be renewed for successive two-year periods; however, it is not a permanent residence visa. Since OI visas are issued for a specific period and purpose, and they can be clearly identified as directly connected to work performed on a Federal award, their costs (including renewals) are allowable provided they meet the four requirements in the fourth bullet point listed in I A above.

- Attorneys' fees incurred in connection with the acquisition or renewal of an OI visa is an allowable cost.

D. Passport Costs

- Since passports are not issued for a project specific purpose and can be used for multiple trips over the years that involve business or pleasure, the cost of obtaining or renewing a passport is unallowable.

II. Development of AURA Policy to cover Short-term Travel Visa Costs and the Cost of OI Visas.

An AURA Policy covering the payment of short-term travel visa costs and the costs of OI visas has been developed and steps will be taken to add this to the AURA policies either as a stand-alone policy or as an additional subsection of an existing AURA Policy such as Relocation or Reimbursement of Travel Expenses.

III. Compliance with Allowable Costs Requirements-Action Required

All Center and HR personnel must observe the cost allowability rules in this memo. Unallowable costs must be charged to unencumbered income sources. Please contact me directly to discuss any questions about this memo or any situation involving visa and/or passport costs not covered by this memo.

Passport and Visa Guidance Supplement

This document will serve to clarify and supplement the November 7th Passport and Visa Memo pertaining to the allowability of visa and passport costs by providing a breakdown of the requirements as they apply to AURA as well as examples to illustrate the major points made in the memo.

Definition:

Unallowable – unallowable means costs cannot be paid using Federal Award funds. Unallowable costs, if supported by the Center, must be paid with funds from unencumbered income sources.

I. Short-term travel visa costs incurred in conjunction with the recruitment of a new employee

(including visa renewal costs and attorneys' fees to obtain the visa) are an allowable direct cost that may be charged to a Federal award provided that the short-term travel visa costs are:

- (i) Critical and necessary for the conduct of the project;
- (ii) Allowable under the applicable cost principles;
- (iii) Consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and
- (iv) Meet the definition of "direct cost" as described in the applicable cost principles.

See Uniform Guidance §200.463 (d). The Preface to the Uniform Guidance which discusses the basis for Uniform Guidance changes states, "Commenters recommended that costs associated with visas when critical skills are needed for a specific award should be allowed."

Breakdown:

Definition of a short-term travel visa:

- **Uniform Guidance:** A short-term travel visa is defined in the Uniform Guidance as a visa "issued for a specific period and purpose," that "can be clearly identified as directly connected to work performed on a Federal award."
- **U.S. Immigration Law:** Under U.S. immigration law, a short-term travel visa is a nonimmigrant visa that is issued to a person with a permanent residence outside the United States, but who wishes to be in the U.S. on a temporary basis for tourism, medical treatment, business, temporary work or study, etc.

Examples of allowable short-term travel visas in the U.S. that are covered include:

H-1B, TN, E-3, O-1, J-1.

Requirements that short-term travel visa must meet to be allowable:

Cost must be:

- Incurred in conjunction with the recruitment of a new employee to perform work in the U.S.;
- Critical and necessary for the conduct of the project;
- Allowable under the applicable cost principles;
- Consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and
- Meet the definition of "direct cost" as described in the applicable cost principles.

Costs allowed:

- The fees paid to the Federal government to obtain the short-term travel visa
- Attorneys' fees charged to obtain the visa
- Short-term travel visa renewal costs; the renewal of a short-term visa for an employee to continue/complete work on a Federal award is allowable, since the purpose of the renewal is to permit the employee to complete the work that they were recruited to perform. If the visa is not

renewed, AURA would be required to recruit a substitute employee to complete the work at an additional expense over and above the cost of renewing the visa.

Example: NOAO, through AURA HR, recruits worldwide for a scientist who has very specialized knowledge on near-earth objects to assist NOAO in completing a research project approved and funded by the NSF. The NOAO Directorate determines that hiring a scientist with specialized knowledge to perform this work is critical and necessary to complete the project. AURA makes an offer of employment for up to two years to a preeminent scientist who is a citizen of Hungary; the offer is accepted. AURA pays for the costs of a short-term travel visa for the scientist to work in Tucson to complete the work for NOAO. This is an allowable cost.

If the visa issued to the Hungarian scientist must be renewed after two years because the work is not complete, the costs of renewal including attorneys' fees is an allowable cost.

II. Long term immigration visa (a/k/a Green Card to become a permanent U.S. resident) and all ancillary costs incurred to obtain such a visa are unallowable since the purpose of the visa is not to perform work on a particular Federal award, but rather to become a permanent U.S. resident.

Breakdown

Definition of a Long-term immigration visa (U.S.)

- **U.S. Immigration Law** defines a long-term immigration visa as a visa issued to someone who wants to live permanently in the U.S.
- **The Uniform Guidance §200.463(d)** directly states that long-term immigration visa costs are unallowable. Reasons for this include the following:
 - ♦ Unlike short-term travel visas, a long-term immigration visa is not issued for a specific period and purpose that can be clearly identified as connected to work performed on a Federal award.
 - ♦ The purpose of a long-term Immigration visa is not to perform work on a particular Federal award, but rather to become a permanent resident.

Examples of long-term immigration visa forms include: Form I-140 (Alien petition to work in U.S. on permanent basis) and Form I-485 (application for "Green Card" to become permanent resident). If an existing employee is being sponsored by their employer for a long-term immigration visa, both forms are filed to obtain the Green Card. The I-140 petition is filed first and then the I-485 form or, both forms may be filed simultaneously. Note that if becoming a permanent U.S. resident is based on criteria other than employment (such as asylum, family members already in U.S., etc.), the immigrant petition form that is filed will be different from the I-140.

Costs that are not allowable include:

- The fees paid to the federal government in conjunction with filing an I-140 and an I-485 visa form
- Attorneys' fees to obtain a long-term immigration visa
- The cost of medical exams
- Other ancillary costs incidental to obtaining a long-term immigration visa

Example: An AURA employee on an H1-B visa that has been renewed the maximum number of times allowed needs a Green Card to continue to stay in the U.S. and to work for AURA. All of the costs associated with obtaining a Green Card are unallowable.

III. The cost of an Organización Internacional (OI) visa (a type of short-term Chilean travel visa) (including any renewal costs) in conjunction with the recruitment of a new employee or the transfer of an existing U.S. based AURA employee to perform work on a Federal award in Chile for a period of time beyond 180 days is a cost chargeable to a Federal award provided that the OI visa costs are:

- (i) Critical and necessary for the conduct of the project;
- (ii) Allowable under the applicable cost principles;
- (iii) Consistent with the non-Federal entity’s cost accounting practices and non-Federal entity policy; and
- (iv) Meet the definition of “direct cost” as described in the applicable cost principles.

Breakdown

Definition of OI visa:

- An OI visa is a short-term work and residence visa that permits non-Chilean citizens to perform work in Chile beyond a 180-day period and for up to two or more years. An OI visa may be renewed for successive two-year periods; however, it is not a permanent residence visa. Since OI visas are issued for a specific period and purpose, and they can be clearly identified as directly connected to work performed on a Federal award, their costs (including renewals) are allowable provided they meet the four requirements listed above.
- Pursuant to Chilean legislation enacted for the benefit of AURA to operate an observatory in Chile, non-Chilean citizens who work for AURA in Chile for longer than 180 days (whether they are newly recruited or an existing AURA employee who has been recruited to work in Chile) must obtain an OI visa (no exceptions).

Requirements that the OI visa must meet to be allowable:

The costs of an OI visa must be:

- Incurred in conjunction with the recruitment of a new employee or the transfer of an existing AURA employee from the U.S. to perform work in Chile for a period of time beyond 180 days;
- Critical and necessary for the conduct of the project;
- Allowable under the applicable cost principles;
- Consistent with the non-Federal entity’s cost accounting practices and non-Federal entity policy; and
- Meet the definition of “direct cost” as described in the applicable cost principles.

Costs that are allowable:

- Any fees payable to the Chilean government to obtain an OI visa
- The costs of any attorneys’ fees incurred to obtain the OI visa

Example: The Gemini South Observatory is recruiting for a scientist to assist it with its instrumentation program in Chile. The HR office recruits an instrumentation scientist from a prominent university in Australia to work for Gemini full-time in Chile. The costs associated with obtaining an OI visa for the Australian scientist to work for AURA and live in Chile are allowable.

IV. Passport costs are an unallowable cost. Since passports are not issued for a project specific purpose and can be used for multiple trips over multiple years that involve business or pleasure, the cost is unallowable.

Breakdown

Definition of a passport:

“An official document issued by the government of a country to one of its citizens and, varying from country to country, authorizing travel to foreign countries and authenticating the bearer’s identity, citizenship, right to protection while abroad and the right to reenter his or her native country.” (Retrieved from <https://www.dictionary.com/browse/passport>.)

Costs that are unallowable:

- The passport fee charged by a country’s government to obtain a passport
- Expediting fees charged by a country’s government to obtain a passport or the renewal of a passport on an expedited basis
- Passport renewal fees
- Cost of having photograph taken for passport

Example: A new U.S. based LSST employee who has never traveled internationally before needs a passport to travel to France on business and an existing U.S. based LSST employee needs their passport renewed so they can travel to Chile to perform work on the LSST Project. These costs are unallowable.

V. Short term travel visa costs incurred by existing employees to attend an international workshop or a conference are allowable.

Short term travel visa costs incurred by existing employees to attend an international workshop or a conference are allowable.

- Under the terms of AURA’s Cooperative Agreements (CAs) and Cooperative Support Agreements (CSAs), all AURA Centers have certain research and education and public outreach obligations and duties owed to the NSF and the U.S. Astronomical community; three AURA NSF Centers operate in and/or are affiliated with other countries, and also owe research and educational and public outreach duties to the international communities they serve.
- The NSF PAPPG contains provisions which endorse awardee acquisition of required visas as an allowable cost for scientists and engineers engaged in research or studies in foreign countries—whether it be an NSF Project or attending a conference.
- While attendance at international astrophysics and engineering conferences is generally voluntary, AURA employee attendance at these conferences is critical and necessary to fulfill Center research and education and public outreach obligations owed to the NSF and to the domestic and international communities each Center serves.
- From time to time, an AURA employee may be required to obtain a short-term travel visa to attend such conferences. The costs of such visas are allowable so long as the employee’s conference attendance is ordinary and necessary for the proper and efficient performance of research and educational and public outreach activities under the Center CA/CSA, and the costs incurred for procuring the short-term visa are reasonable.

Breakdown

Costs that are allowable:

- Cost of procuring short term travel visa including but not limited to, fees charged by a government to obtain the visa

- Attorneys' fees to obtain the visa
- Other ancillary costs incidental to obtaining the visa

Example: A Russian citizen employed by AURA/Gemini needs a short-term travel visa to attend an international astrophysics conference in Belgium to present the results of their research. The cost of the visa is allowable.