



NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive establishes Transportation Security Administration (TSA) policy and supersedes the Federal Aviation Administration (FAA) orders, policies, guidance, bulletins regarding Citizenship Requirements issued under the FAA personnel management system.

1. **PURPOSE:** This directive provides TSA policy and procedures regarding citizenship requirements for TSA employees and provides guidance on employment of United States (U.S.) citizens, U.S. nationals and/or non-citizens.
2. **SCOPE:** This directive applies to all TSA organizational elements and all TSA employees.
3. **AUTHORITIES:**
 - A. 8 C.F.R. 274a
 - B. Executive Order (EO) 12968 – Access to Classified Information, dated August 2, 1995
 - C. Homeland Security Act (HSA), Pub. L. 107-296, dated November 25, 2002
 - D. Immigration and Nationality Act of 1990, as modified, 8 U.S.C. §§ 1101(a) (22), §1324a, §1401 and §1408
 - E. Immigration Reform Act of 1986
 - F. Sections 101 and 111(d) of the Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA), November 19, 2001 (49 U.S.C. §§ 114(n), 40122, 44935, and 44935 note)
4. **DEFINITIONS:**
 - A. Alien: A person who is not a U.S. citizen or U.S. national.
 - B. Appropriations Act Ban: Annual, statutory ban (usually appearing in the Treasury and General Government Appropriations Act) that prohibits agencies from using appropriated funds in the continental United States to pay Federal employees unless they are United States citizens, U.S. nationals or meet one of several exceptions.
 - C. Citizen: Citizens of the U.S. are individuals who were:
 - (1) Born in the U.S. (the fifty states, the District of Columbia, Puerto Rico, Guam¹ (since 1950), or the U.S. Virgin Islands);
 - (2) Born outside the U.S. and its outlying possessions², to parents who are citizens of the U.S., one of which was physically present in the U.S., or one of its outlying possessions,

¹ Northern Mariana Islands are linked to Guam.

² Current outlying possessions are American Samoa and Swains Island which are part of the Samoa region.

for a continuous period of one year at any time prior to the birth of the person (in some situations only one parent has to be a citizen);

- (3) Naturalized as a U.S. citizen; or
 - (4) Otherwise granted citizenship under authorities described in law, beginning at 8 U.S.C. 1401.
- D. Excepted Service: Positions in the executive branch of the Federal Government which are specifically excepted from the competitive service by statute, Executive Order, or Office of Personnel Management (OPM) regulations and which are not in the Senior Executive Service. TSA is an excepted service agency.
- E. Transportation Security Officer (TSO): Employee who occupies a position of a TSO, Lead TSO or Supervisory TSO.
- F. Suitability: A determination based on an individual's character or conduct that may have an impact on the integrity or efficiency of their employment. Determinations made under this category are distinct from determinations of eligibility for security clearances.
- G. U.S. National: A person who is a citizen of the U.S. or who, though not a citizen of the United States, owes permanent allegiance to the U.S.³.

5. RESPONSIBILITIES:

- A. Assistant Administrator, Office of Human Capital (OHC), or his/her designee, is responsible for:
- (1) Ensuring that all TSA vacancy announcements state that applicants must be a U.S. citizen or U.S. national and that the appointment is subject to a favorably adjudicated personnel security investigation and/or eligibility for granting a security clearance.
 - (2) Verifying employment eligibility of all potential employees by requiring the candidate to complete U. S. Citizenship and Immigration Services (USCIS) Form I-9, *Employment Eligibility Verification*, and checking the candidate's' verification documents.

³ U.S. national includes a person who has lived in an outlying possession, and must meet the requirements described in 8 U.S.C. § 1408. Unless otherwise provided in 8 U.S.C. § 1401, the following shall be U.S. nationals, but not citizens at birth:

- (1) A person born in an outlying possession of the U.S. on or after the date of formal acquisition of such possession;
- (2) A person born outside the U.S. and its outlying possessions of parents both of whom are nationals, but not citizens, of the U.S., and have a residence in the U.S., or one of its outlying possessions prior to the birth of such person;
- (3) A person of unknown parentage found in an outlying possession of the U.S. while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession; and
- (4) A person born outside the U.S. and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the U.S., who prior to the birth of such person was physically present in the U.S. or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years during which the national parent was not outside the U.S. or its outlying possessions for a continuous period of more than one year, and at least five years of which were after attaining the age of fourteen years.

- (3) Coordinating with managers in the recruitment and hiring process to ensure that all laws, regulations, and policies are met prior to approving the appointment of a non-citizen/non-U.S. national to a non-TSO position.
- (4) Consulting, as necessary, with Department of State, to verify that a specific individual who is a non-citizen/non-U.S. national and is being considered for employment in a non-TSO position, falls within a currently authorized exception, before appointment efforts are initiated.
- (5) Providing final approval of an appointment of a non-citizen/non-U.S. national to a non-TSO position after thoroughly reviewing all documentation relating to the candidate to ensure all requirements for such appointment have been met.

B. Director, Office of Personnel Security, within the Office of Law Enforcement/FAMS, or his/her designee, is responsible for:

- (1) Evaluating pertinent data contained in background investigation, and/or any other available relevant reports, to determine whether an employee is suitable for Federal employment.
- (2) Verifying that any non-citizen being considered for an excepted service position meets the criteria in EO 12968 for access to classified information.

C. Selecting Official is responsible for:

- (1) Working with OHC to develop a recruitment strategy to attract a broad range of qualified applicants and that any candidate they plan to hire is eligible to work in the U.S., in conformance with applicable laws and regulations.
- (2) Ensuring there are no qualified U.S. citizens or U.S. nationals eligible for appointment, prior to considering a non-citizen/non-U.S. national for employment for a non-TSO position.
- (3) Submitting a written request to the Assistant Administrator for Human Capital to obtain the appropriate approval prior to hiring a non-citizen/non-U.S. national for a non-TSO position.

D. Selectee is responsible for providing the required documentation verifying his/her eligibility to work in the U.S.

6. POLICY:

- A. TSA will give strong priority to hiring U.S. citizens and U.S. nationals for all non-TSO positions.⁴

⁴ TSA *must* hire only U.S. citizens or U.S. nationals for TSO positions.

- B. In the rare instance that a qualified U.S. citizen or U.S. national cannot be identified for a critical TSA position, a qualified non-U.S. citizen may be hired if permissible under an exception to the Treasury and General Government Appropriations Act. This act bans using appropriated funds to pay the compensation of any officer or employee of the Government of the United States whose post of duty is in the continental United States unless that person is a citizen of the United States or owes allegiance to the United States, or meets other specific criteria. Exceptions to this ban are subject to change. Selecting officials wishing to consider non-citizens must consult with the OHC before proceeding.

7. PROCEDURES:

- A. Vacancy announcements will contain a statement that applicants must be a U.S. citizen or U.S. national. Announcements will also state that an appointment is subject to verification of citizenship status and a favorably adjudicated personnel security investigation and/or eligibility for granting a security clearance.
- B. If there are no qualified U.S. citizens/U.S. nationals for a particular position, selecting officials must follow appropriate procedures before hiring a non-citizen/non-U.S. national for a non-TSO position.
 - (1) In order to document that no U.S. citizens or U.S. nationals are qualified for a particular position, selecting officials must demonstrate that they have advertised to the broadest extent possible in their efforts to fill the vacancy. This may include vacancy announcements open to all qualified applicants; paid advertisements in journals; newspapers and magazines; and a history of being unable to fill similar positions, despite extensive recruitment.
 - (2) When it has been established that there are no qualified U.S. citizens or U.S. nationals available and a qualified non-citizen who meets the provisions for employment, as stipulated in section 6B above, has been identified, the Request to Hire a Non-Citizen must be completed and submitted through appropriate channels along with the job analysis tool and the prospective candidate's resume, as follows:
 - (a) The selecting official will complete the Request to Hire a Non-Citizen and submit to Area Director (via the Federal Security Director (FSD)) or Office Director, as appropriate, for approval and signature.
 - (b) The request must:
 - (i) identify the prospective candidate's current country of citizenship;
 - (ii) describe the candidate's efforts to become a U.S. citizen;
 - (iii) identify the position for which the candidate is being considered;

- (iv) describe the efforts made to recruit and hire a U.S. citizen or U.S. National, as defined; and
 - (v) include a justification as to why this candidate is the best qualified candidate for the vacant position.
 - (c) If Area/Office Director approves, the form will be submitted to the Assistant Administrator, OHC, or his/her designee, for review and final approval prior to hiring a non-citizen/non-U.S. national.
 - (d) The AA/OHC will issue a written decision to grant or deny the request. The decision of the AA/OHC is final.
 - (3) Term of appointment: Appointments of non-citizens/non-U.S. nationals will be temporary and must conform to the time limits on temporary appointments.
 - (a) Appointments cannot exceed the period of legal employment in the U.S. granted by the Bureau of Citizenship and Immigration Services.
 - (b) Appointments provide the incumbent with sick and annual leave if the appointment is for more than 90 days.
 - (c) Appointments provide the incumbent with the opportunity to be covered under health benefits and life insurance if the appointment is for more than one year.
 - (d) Appointments do not confer eligibility for permanent employment to the non-citizen.
 - (e) Appointee cannot be reassigned or promoted to another position, except in situations where a qualified U.S.citizen/U.S.national is not available, and the applicable process and approvals have again been followed and granted.
 - C. Current non-TSO employees who are non-citizens and were hired prior to the effective date of this directive will retain their present position at TSA provided they meet the criteria to obtain a favorably adjudicated suitability determination and/or eligibility for security clearance. The current employee's appointment to non-TSO position cannot exceed the period of legal employment in the U.S. granted by the USCIS.
- Note:** Any subsequent change in position is subject to the requirements of this directive.
- D. Dual Nationality: Dual citizenship, with one country being the U.S., in and of itself, is not a bar to employment with TSA.

8. EFFECTIVE DATE AND IMPLEMENTATION: This policy is effective immediately upon signature.

APPROVAL



7/24/2006

Richard A. Whitford
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Date

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