

## **Frequently Asked Questions**

### **H-1B Nonimmigrant Status for Professionals**

#### **Q. Who may obtain H-1B status?**

A. H-1B nonimmigrant status is available for individuals who are coming into the United States temporarily to perform services as a professional in a specialty occupation. Nonimmigrants who are currently in the United States in a legal status may be eligible to change to H-1B status. An H-1B petition must be filed by a U.S. employer on behalf of the intended employee.

#### **Q. What is a specialty occupation?**

A. A specialty occupation is defined as one that requires a “theoretical and practical application of a body of highly specialized knowledge.” The position must require a bachelor’s or higher degree (or foreign equivalent). Examples of specialty occupations include accountant, computer analyst, engineer, scientist, and architect.

#### **Q. What is involved in applying for H-1B status?**

A. A Labor Condition Application (LCA) is submitted online with the U.S. Department of Labor (DOL). Upon instant receipt of the certified LCA, the employer must then file the Form I-129, Petition for Nonimmigrant Worker, with the H Supplement, Data Collection, supporting documentation, and a copy of the signed and certified LCA with United States Citizenship and Immigration Services (USCIS). Upon approval, the employee may apply for an H-1B visa at a U.S. Consulate, or will be granted a change of status if they are in status in the US.

#### **Q. What are the filing fees for H-1B status?**

A. The filing fee is U.S. \$190. Employers must also pay a \$1500 (\$750 for employers with 25 employees or less) “U.S. Worker Training Fee” to Department of Homeland Security for the initial petition they file and for the first extension they file on behalf of a particular employee. Employers are also required to pay a \$500 “Anti-Fraud Fee” for the initial petition filed on behalf of a particular employee. Finally, if faster adjudication is desired, USCIS provides an option to pay an extra fee of \$1000 and obtain “premium processing” of an H-1B petition, which guarantees adjudication within two weeks of filing.

**Q. What documentation is required to file a petition for H-1B status?**

A. The following documentation is required:

1. An approved LCA from the DOL.
2. Documentation that the job qualifies as a specialty occupation.
3. A copy of the individual's U.S. degree (bachelor, master or Ph.D.) and/or a foreign degree with evidence that it is equivalent to a U.S. bachelor's degree or higher. (A combination of education, specialized training, or experience that is equivalent to a U.S. bachelor's degree may be submitted to meet this requirement.)
4. A copy of any required license to practice the occupation in the state of intended employment.

**Q. How may an individual determine if a foreign degree is equivalent to a U.S. degree?**

A. An individual may request an evaluation from a reputable credentialing agency.

**Q. Is there a certain wage that must be paid to an H-1B employee?**

A. Yes. The wage paid to an H-1B employee must be the higher of 1) the "prevailing wage" (generally, the average wage for the occupation in the geographic area in which the employee will be employed, or the wage set by a union contract for the position) or 2) the "actual wage" (the wage paid by the employer to other employees in the occupation with similar qualifications).

**Q. How does an employer determine the prevailing wage ?**

A. An employer may request a prevailing wage determination from the State Employment Service Agency (SESA) or may rely upon wage data from an independent survey if the survey meets the Department of Labor requirements.

**Q. May an H-1B employee work part-time?**

A. Yes. An H-1B employee may work part-time if the employer petitioned for part-time employment and all other H-1B requirements are met.

**Q. How long does this petition process take?**

A. It may take from 6 to 16 weeks to complete the petition process if all of the required documentation was filed with the petition. USCIS provides an option to pay an extra fee of \$1000 and obtain "premium processing" of an H-1B petition, which guarantees adjudication within two weeks of filing.

**Q. Are there any times of the year when new H-1B visas are unavailable?**

A. Yes. In recent years, the quota or “cap” for H-1B visas has been reached as early as mid-May. When the cap is reached, no individual may obtain an H-1B until October 1 of the following fiscal year unless the individual is already in H-1B status and seeking an extension, change of employer, or addition of employer. H-1B petitions may be filed as soon as six months ahead of time, or on April 1 for an October 1 start date.

**Q. May an H-1B individual work for more than one employer?**

A. An H-1B individual may work for more than one employer if each employer has properly filed an H-1B petition. All employees after the first H-1B employer can allow the employee to commence employment after the filing of the new H-1B petition.

**Q. How long may an individual remain in H-1B status?**

A. In most cases, an individual may remain in H-1B status for a maximum of six years. The initial petition may be approved for up to three years, and subsequent requests for extensions may be approved for up to a maximum of six years. The six years cannot be extended by changing employers. In certain limited situations, the individual can obtain H-1B extensions beyond six years while a permanent resident case is pending.

**Q. What happens if the employment is terminated before the employee’s H-1B status expires?**

A. If the employer terminates the employment for any reason and before the approved expiration date, the employer is responsible for notifying USCIS and providing return transportation of the employee to his or her last place of foreign residence. In this event, the employee loses legal status and may be required to leave the U.S. unless the employee finds a new employer willing to file a new petition on his or her behalf on a timely basis, or is able to obtain a different nonimmigrant status.

**Q. May an employee in H-1B status travel outside of the U.S.?**

A. Yes, an employee in H-1B status may travel if the H-1B status is valid and he or she has a valid H-1B visa in the passport. If the employee does not have a valid H-1B visa, then the employee must obtain an H-1B visa abroad.

**Q. May an employee in H-1B status with a pending extension travel outside of the U.S.?**

A. Yes, an employee in H-1B status with a pending extension may travel outside of the U.S. However, if the current valid H-1B status expires while the employee is

abroad, then the individual must remain abroad until the extension is approved and also must obtain a valid visa before returning to the U.S.

**Q. May an individual in the U.S. in a nonimmigrant visa status change to H-1B without leaving the U.S.?**

A. Yes, if he or she meets all of the criteria for H-1B status and is in valid nonimmigrant status.

**Q. How may an individual in a valid nonimmigrant status obtain or extend the validity of the visa in his or her passport?**

A. Generally, individuals wishing to apply for nonimmigrant visas must make a personal appearance before a U.S. consular officer at a U.S. Embassy or Consulate outside of the U.S. Most applicants apply in their home country while visiting there after changing status in the United States. In certain instances, an individual may have his or her visa issued in Canada or Mexico, or in another country than his or her home country.

**Q. What happens if an H-1B wants to switch employers?**

A. If an H-1B nonimmigrant wants to switch employers, the new employer must file a petition for H-1B status with USCIS. The individual may commence work for the new employer when the new H-1B petition is filed. This only applies to employees already granted H-1B status with another employer.

**Q. What happens if an H-1B employee changes positions but remains with the same employer?**

A. Unless the change in position is an insignificant change, a new LCA and H-1B petition will have to be filed.

**Q. What happens if the employer transfers the H-1B employee to another location?**

A. In most cases, a new LCA and H-1B petition will have to be filed. There are some exceptions including if the relocation is not a permanent relocation but a short-term transfer.

**Q. Must an employer under take any specific recruitment for U.S. workers prior to filing an H-1B petition?**

A. No, unless the employer has been found to be a willing violator of the LCA regulations.

**Q. What is the immigration status of an H-1B employee's family in the U.S.?**

A. A spouse and dependent minor children (unmarried children under the age of 21) of an H-1B employee are entitled to H-4 status. They may not accept employment in that status, but may study in the U.S. If the spouse is eligible for a different status than H-4 (including H-1B), the spouse may elect to enter the U.S. in that status rather than entering as an H-4. Spouses should note that an offer of employment from a U.S. employer is required in order to obtain most types of work-authorized nonimmigrant status.

**Q. May a spouse and/or dependent minor children in H-4 status obtain a Social Security Card?**

A. No. Individuals in H-4 status may not be eligible to obtain Social Security Cards. However, they may apply for a Taxpayer Identification Number (ITIN) in some circumstances. This application is filed with the U.S. Internal Revenue Service (IRS).