

H-1B Basic Requirements and Information

The H1-B Temporary Worker (nonimmigrant) classification is designated by the US Citizenship and Immigration Services (CIS, formerly the US Immigration and Naturalization Service, or 'INS'). The H-1B classification is limited to aliens employed in specialty occupations (usually highly technical and professional workers such as computer scientists or engineers) and fashion models of distinguished merit and ability (20 C.F.R. Part 655). The H-1B is for professionals who come to the U.S. for a limited amount of time. To be employed in a specialty occupation, an alien must have:

- A job offer in a profession requiring theoretical and practical application of highly specialized knowledge
- An academic degree (bachelor's or higher, or equivalent) in the *specific* specialty from an accredited college or university; and
- A state license, if required, to practice in the occupation, for example Doctor's must possess a State Certification to practice in the State of Ohio.

Equivalent job experience can be substituted for a degree. In general, three years of specialized or professional experience equal one year of accredited college or university study. The degree must be a usual requirement in the industry for the position.

USCIS identifies and defines specific occupations covered by the H-1B category and evaluates aliens' qualifications for those occupations. The services performed by an H-1B alien can be temporary or permanent, but the employment itself must be for a temporary period only. The U.S. employer must file a petition to employ a foreign national and must also file a labor condition application that states that the employer will pay the prevailing wage for the position. Permission is granted for an initial period of three years and may be extended for a maximum of six years. There is an annual 65,000 cap and a per country cap on H1-B visas. Exempted from this cap are higher education institutions, non-profit and governmental research organizations and certain physicians who had J-1 visas. In addition, visas unused in a calendar quarter will be allocated to subsequent quarters without regard to per-country limits.

Procedural Issues/Limitations:

- The H-1B visa application process is very complicated and may take two to six months to complete and employees may not begin to work until the application is approved (unless a department is willing to pay for the CIS Premium Processing service—see Form I-907 and instructions in the back of this packet). As a result, employers are advised to apply for these visas as soon as the need arises. Holders of H-1B visa, however, may start work in a new job or with a new employer immediately upon filing a new H-1B petition. Employers who take advantage of this provision comply with their I-9 requirements by attaching a copy of the receipt notice for the newly filed petition along with a copy of the alien's I-94 to the I-9 kept on file.
- A petition for H-1B classification is filed with CIS by the petitioner (UT Department/unit) that requires the services of a foreign national on a temporary basis. It cannot be filed by the foreign national.
- Communication with UT HR about the status of a petition should come from the department, not the foreign national.
- H-1B status may be requested for a maximum of three years at one time. H-1B's should not be requested for a period longer than can be guaranteed by funding availability.
- The maximum time permitted in H-1B status is six years, which is reduced by any prior periods of stay in any H-classification (this includes H-4 dependent status).
- Travel outside the US will affect the processing procedures used in obtaining the H-1B approval for foreign nationals already inside the US. Please inform UT HR of any travel plans by the foreign national.
- Delays with US consulates abroad may contribute to delays in the arrival of foreign nationals waiting to enter the US. Following the events of 9/11/01, delays may be considerable in some instances.

- Obtaining approval of H-1B status from CIS does not guarantee issuance of the H-1B visa by a US consulate.
- H-1Bs are not transferable. They are approved for a specific job at a specific employer in a specific location (city and state). ANY CHANGES require consultation with UT HR and PRIOR approval by CIS. If new to UT, the foreign national must maintain an appropriate nonimmigrant status until the UT petition is approved.
- Honoraria and consultation fees paid by an employer other than UT are not covered by UT's H-1B petition and could constitute illegal employment under CIS regulations.
- Under certain circumstances, H-1Bs may be portable, allowing a foreign national to leave one H-1B employer for another H-1B employer even before CIS has approved the petition for the new employer. CIS has not yet released regulations regarding this; therefore, each employer must formulate its own policies until that time. The UT H-1B petition must have been filed with CIS before a foreign national may use H-1B portability rules to begin working at UT. Filed constitutes receipt of a notice of action from CIS that the case has been accepted for processing. NOTE: Individuals MUST maintain employment with the current H-1B employer at least until the UT petition has been received by CIS. Departments must consult UT HR if this interests them.
- A foreign national currently outside the US may not begin working for UT until the H-1B petition is approved by UT, or enter the US more than 10 days before the start date on the approval notice. Therefore, where 10 days may not be enough time for the foreign national must be in paid status while in the US during any portion of the employment dates shown on the H-1B approval notice.
- Positions used in the H-1B process must be paid or salaried, and must meet Department of Labor prevailing, or minimum wage regulations as guaranteed by a certified Labor Condition Application (LCA). It is not possible to obtain H-1B approval for fellow or other positions if those positions do not require completing Form I-9. Persons in any positions that do not require completion of Form I-9 are not considered employees of UT.
- For tenure-track faculty positions, departments should request approval for a full three-year period.
- Only spouses and children under 21 may accompany the foreign national (dependent H-4 status).
- Persons in H-4 dependent status may not work (unless they change to another nonimmigrant status which allows for work).
- Persons who are or have been in J-1 or J-2 status and are still subject to the "two-year home country residence requirement" are not eligible for change of status to H-1B until the two-year requirement is fulfilled or a waiver is obtained. The waiver process can take six months or longer.

Effect on Immigration Applications: Employees who are in the U.S. on an H1-B visa and who are waiting for approval of their green card may get one year extensions in their visas beyond the six year limit if at least 365 days have passed since their application for the green card was filed. Also, if the application has been pending more than 180 days, a promotion to a new job or even a change in employer within the same occupational classification will not void the application.