

## MAINTAINING H-1B STATUS

H-1B employees are responsible for understanding and complying with U.S. federal laws and regulations governing H-1B status. Please note that this document is intended for informational purposes only and is not all-inclusive nor should it be substituted for legal advice

### **This section utilizes commonly used acronyms:**

**DHS:** Department of Homeland Security

**DOL:** Department of Labor

**USCIS:** U.S. Citizenship and Immigration Services

**DOS:** Department of State

**CBP:** Customs and Border Protection

**OISSS:** Office of International Student & Scholar Services

### **KNOW YOUR IMMIGRATION DOCUMENTS**

**H-1B Petition:** This petition consists of USCIS Form I-129 (Petition for a Nonimmigrant Worker), a Labor Condition Application (LCA) certified by DOL, and your supporting documents. This petition is specific to UT, and specific to your terms and conditions of employment, such as job title, nature of job duties, the number of weekly hours to be worked, salary, and work location(s).

**I-797 H-1B Approval Notice:** Upon approval of an H-1B petition, USCIS issues a Form I-797, Notice of Action, indicating the approved classification (H-1B) and dates during which the petition is valid. Please safeguard this document as it is required for entry to the U.S., visa applications, and to apply for many benefits in the U.S. such as a Driver's Licence, SSN, or a home loan.

Please note that Form I-797/H-1B Approval Notice is **NOT** a "visa" and may not be used in place of a visa. Approval of an H-1B petition does not in itself grant any immigration "status" and does not guarantee that the beneficiary will be found eligible for a "visa", for admission to the U.S., or for an extension, change, or adjustment of status.

**H-1B Visa vs. Status:** The terms "visa" and "status" are often used interchangeably, but they actually refer to different things. The term "visa" refers only to the stamp adhered to your passport issued by a DOS Consular Office abroad, which allows you to request permission to enter the U.S. for some specific purpose (e.g., employment). Having a visa does not by itself guarantee entry to the U.S. You must present your visa along with other documents supporting your purpose for coming to the U.S. to a CBP officer at a U.S. port of entry. If you are permitted to enter the U.S., you are granted "status," which permits you to engage in the activity for which you came to the U.S. as long as you adhere to the regulations governing that status.

A visa is **NOT** an indicator of "status" nor does it determine how long you are authorized to remain (or work) in the U.S. Since the visa is only a travel document, your "visa" may expire while you are in the U.S. as long as your underlying immigration "status" as indicated on your I-94 remains valid and you continue to comply with immigration regulations. However, you require a valid visa any time you seek entry into the U.S., so you will need to apply for/renew a visa prior to re-entry after a trip abroad.

**Form I-94 is the controlling document regarding your lawful status in the U.S.** and determines the duration for which you are permitted to remain in the U.S. Once the I-94 expiration date is reached, your status will end, even if other documents are valid! You will need Form I-94 to apply for benefits in the U.S. such as a Driver's License or SSN.

Upon each entry to the U.S., a CBP officer stamps your passport with your admission date, class of admission (e.g., H-1B), and the date you are admitted until. Arrival/departure information is recorded electronically through an automated process and I-94 records can be retrieved online from: <https://i94.cbp.dhs.gov/i94>. In some cases, CBP may still issue a paper Form I-94.

If you subsequently extend or change your “status” in the U.S. without travelling abroad, USCIS (rather than CBP) will issue a new paper Form I-94 attached to the bottom of an I-797 Notice. Please remember that each time you receive a new I-94 record (whether it is issued by CBP or USCIS), it supersedes your previous I-94, even if the new I-94 has an earlier expiration date.

It is your responsibility to monitor your I-94 expiration date. When you remain in the U.S. after the expiration of your I-94, i.e., “overstay,” you may begin accruing “unlawful presence.” Immediate consequences may include leaving the U.S. to obtain a new visa stamp in your home country, and re-entering the U.S. before you may resume your activities. Accumulating a certain amount of unlawful presence could also trigger 3- and 10-year bars from entering the U.S. Overstaying may also affect your eligibility for future immigration benefits (e.g., green card).

**Passport:** Keep your passport (and your dependents’ passports) valid at all times. If your passport expires prior to the I-797 expiration date, upon travel/entry to the U.S., a CBP officer may shorten your I-94 expiration date to match the date your passport expires. If this occurs, your “status” in the U.S. will expire despite having an approved H-1B petition, unless certain actions are taken to extend the status. In this scenario, employees may “correct” their I-94 by travelling abroad and re-entering the U.S. using their renewed passport so that a new I-94 record is created. However, if travelling is not an option, OISSS may file an extension of stay on your behalf with USCIS to extend the I-94.

## APPLYING FOR AN H-1B VISA

It is **NOT** possible to apply for/renew a visa while you are in the U.S.; you may only apply at a U.S. embassy or consulate abroad.

Generally, you will need to complete the online nonimmigrant visa application Form DS-160, available here <https://ceac.state.gov/genniv/>, pay the application fee, attend an in-person visa interview, and provide copies of your H-1B documents, as well as any other supporting documentation required by the specific U.S. embassy/consulate. Note that some cases are subject to “administrative processing,” in which case the consular official should give you a document explaining what the next steps will be. Most administrative processing cases are resolved within 60 days of the visa interview. Please note that OISSS is not involved in the visa application process and cannot exert any influence on it. *Note: Canadian citizens (not permanent residents of Canada) are exempt from requiring a U.S. visa to enter the United States.*

## PERIOD OF STAY

H-1B employees may remain in the U.S. through the expiration date indicated on the I-94 (as explained above) **as long as they continue to maintain status**, i.e., fulfill the terms and conditions described in his/her H-1B petition and adhere to any and all regulations governing the H-1B classification.

**There is no guaranteed grace period beyond the expiration date of one’s I-94 while in H-1B status.** However, you may be admitted to the U.S. for an additional 10 days beyond the expiration of your H-1B approval at the discretion of the CBP officer that admits you. If granted, it will be clearly notated on your I-94. This period is meant to help you make arrangements to prepare to depart the U.S. You may **NOT** work during this period.

Effective January 17, 2017, individuals in H-1B status are eligible for a **discretionary grace period up to 60 days in cases where their employment ceases prior to their H-1B expiration date.** Note that this period cannot exceed the approved period of employment indicated on the I-797 Approval Notice. DHS may eliminate or shorten this 60-day period as a matter of discretion.

## H-1B FINITE TIME PERIOD (6-YEAR LIMIT)

H-1B status is limited to six years, which may be requested in maximum 3-year increments. Please note that time spent in H-1B status counted towards that 6-year limit is only counted when you are physically present in the U.S. This means that any 24-hour period spent outside the U.S. may be “recaptured.” There is no definitive list of acceptable proof to document your

stays abroad, but USCIS will generally accept your electronic I-94 travel history, arrival/departure stamps in your passport, flight itineraries/boarding passes, and receipts or bank transactions received while abroad.

An individual may also be eligible for a “new” six years of H-1B status if he/she resided outside of the U.S. for one year preceding the filing of a petition for another term. Alternatively, you may be able to extend beyond the 6-year limit if there is eligibility and timely execution of a permanent residency application.

### **H-1B STATUS IS EMPLOYER SPECIFIC**

H-1B status is employer specific; you may only work for the employer that filed your H-1B petition (i.e., UT). This means that you may **NOT** work for any other employer unless that employer has filed a concurrent H-1B on your behalf. While you are permitted to participate in outside lectures, **you may NOT accept any compensation or honorarium for such activities**. You may, however, be reimbursed for actual travel expenses. Always consult OISSS before accepting reimbursements.

### **CHANGES TO YOUR EMPLOYMENT**

H-1B status is employer specific and specific to the terms and conditions of employment that USCIS approved in the original H-1B petition. Please consult OISSS *before ANY* changes occur. An amended H-1B petition may need to be filed to notify USCIS of the changes. These changes may include but are not limited to change of job title; job duties; the number of hours to be worked per week (e.g., full-time to part-time and vice versa); salary increase or decrease; frequency at which you are paid (e.g., bi-weekly to monthly); and work location (e.g., placement at a different campus or placement at an off-site location). **Failure to notify USCIS of changes in the terms and conditions of employment may be considered a violation of status.**

**Please note the negative consequences of working without the proper authorization: If you violate status or engage in unlawful employment, you may be removed from the U.S. or begin accruing “unlawful presence” which may trigger 3- and 10-year bars from entering the U.S. Violations may also affect your eligibility for future immigration benefits (e.g., green card).**

### **EMPLOYEE RESIGNATION OR TERMINATION**

H-1B employees must notify OISSS if they voluntarily resign from their position or if UT is terminating their position *prior to* their H-1B expiration date. Whatever your plans may be, please discuss with OISSS so that we may help ensure you don’t violate status or “overstay.” Please remember that “overstaying” may affect your eligibility to apply for a “visa,” future admissibility to the U.S., or to file for other immigration benefits in the future (e.g., “green card”).

If UT terminates your employment prior to your approved H-1B expiration date, UT is liable to pay reasonable costs for you to return to your home country of residence (i.e., cost of a plane ticket). UT has no obligation if you voluntarily resign.

### **EXTENDING YOUR H-1B STATUS (for current UT employees in H-1B status)**

OISSS does not assume your H-1B needs to be extended. When an extension is desired, your sponsoring department should notify OISSS **6 months prior to expiration**. The earliest an H-1B may be filed per regulation is 6 months prior to start date.

*Pending H-1B extensions:* Upon UT’s timely filing of a non-frivolous I-129 (H-1B) extension petition and subsequent arrival of a Receipt Notice, employees who have maintained status may continue to work for up to 240 days beyond the expiration of their current period of stay (i.e., beyond the expiration of their I-94) or until USCIS makes a decision, whichever comes first.

## **PORTING H-1B STATUS (TRANSFERRING) TO ANOTHER U.S. EMPLOYER**

If you have accepted a position at another cap-exempt employer, portability employment may begin on the *later* of (1) the date USCIS receives a non-frivolous I-129 (H-1B) petition for new H-1B employment from a new employer or (2) on the requested start date of such a petition. You may be eligible for a discretionary grace period if you cease employment with UT prior to the expiration of UT's H-1B petition; however, your new employer should advise on the portability process.

## **ADDRESS REPORTING REQUIREMENT**

All H-1B and H-4 status holders are required to notify USCIS directly of any residential address changes within 10 days of moving by submitting Form AR-11. For instructions, please see <http://www.uscis.gov/addresschange>

## **INTERNATIONAL TRAVEL FOR H-1B EMPLOYEES**

Please consult OISSS each time you plan to travel outside of the U.S. while in H-1B status. We will review your case, prepare a travel letter, and provide any relevant information to help ensure a smooth re-entry process.

It is generally ill-advised to travel abroad when you have a pending petition; however, it may be permissible in certain circumstances. Please consult OISSS about ANY international travel plans if you have a pending petition.

When travelling outside of the U.S., we recommend carrying the following documents:

- ✓ Valid passport\*
- ✓ Valid H-1B visa stamp\*\*
- ✓ Original I-797 Approval Notice
- ✓ A copy of the H-1B petition;
- ✓ Employment verification letter;
- ✓ Copy of J-1 Waiver (if applicable);
- ✓ Most recent paystubs

\*It is your responsibility to ensure passport validity during your stay in the U.S. Please note your status may be "short-ended" if your passport expires prior to your I-797 Approval Notice. Please review the information on page 1 regarding passports and consult OISSS.

\*\*If you do not have a valid H-1B visa stamp, you will need to apply for one at a U.S. embassy/consulate before returning to the U.S. Certain exceptions *may apply for short travel to Canada/Mexico* (automatic visa revalidation).

Automatic Visa Revalidation may be utilized by H-1B nonimmigrants provided the following conditions are met:

- a) The underlying authorization for current status continues to be valid for Form I-129.
- b) The person's absence from the U.S. was 30 days or less.
- c) The person did not visit any countries other than Mexico or Canada in that period.
- d) The person does not have a pending or rejected application for a new visa.
- e) The person is not a citizen of one of the countries designed by the U.S. as a state sponsor of terrorism.

Please consult OISSS if you are considering utilizing the automatic visa revalidation provision.

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