FAQ (H-1B faculty and employee)

We understand that the situation with COVID-19 could be stressful for various UT colleges, Departments and the H-1B nonimmigrant employees. The Office of International Student & Scholar Services (OISSS) is here to support you and provide all the necessary and up-to-date information and resources. Please contact OISSS via email with any questions or concerns.

OFFICE OF INTERNATIONAL STUDENT & SCHOLAR SERVICES

Is the OISSS operational while the University is closed and employees work remotely?

OISSS remains fully operational while UT employees work remotely. There will not be any changes in the process and preparation of the H-1B petitions. We will prepare the H-1B petitions as usual. Any correspondence and communication regarding the H-1B petitions can be emailed to Maryam.sediqe@utoledo.edu.

Green Card: We are in contact with outside counsel and there are no changes in the green card process. Any questions and correspondence regarding the green card process should be sent via email to maryam.sediqe@utoledo.edu and the attorney assigned to your case.

WORKING FROM HOME

Does working from home due to the COVID-19 pandemic impact the immigration status of the H-1B nonimmigrant employee?

There is no impact on the H-1B status of the employee as long as the employee is still working in the same capacity (there are no changes in the terms and conditions of the employment) and the employee is working from their home which is within normal commuting distance of the intended employment listed on the original petition.

Does UT need to update the Labor Condition Application (LCA) or amend the H-1B petition while the H-1B employee is working from home due to COVID-19 pandemic?

Whether UT needs to update anything with regards to H-1B nonimmigrants working from home depends on whether they live within normal commuting distance. If the person’s home is within normal commuting distance then nothing needs to be done as their home is within the area of intended employment and UT’s main campus.

If the employee’s home is not within normal commuting distance (and therefore outside the area of intended employment) then UT must determine how long they are allowed to work at home under the short-term placement rules. Short-term placement rules allows H-1B nonimmigrants to work at worksites not listed in the approved LCAs. Short-term placements cannot exceed 30 days in a 1-year period unless the (1) the H-1B employee maintains an office or work station at his/her permanent
worksite, (2) the H-1B employee spends a substantial amount of time at the permanent worksite, and (3) the H-1B nonimmigrant’s home is in the area of the permanent worksite and not in the area of the short-term worksite. If these criteria apply then the short-term placement can be for up to 60 days in a 1-year period.

If the employee lives outside of normal commuting distance or exceeds working the amount of permitted days under the short-term placement rules then UT will need to obtain a new LCA for their home. Please contact OISSS or Maryam Sediqe maryam.sediqe@utoledo.edu.

**Does UT need to update the LCA or amend the H-1B petition if new worksites are added for UT physicians?**

It depends on whether the new worksites are within the same Metropolitan Statistical Area (MSA). If the new worksite that was not included in the initial LCA and is within the MSA (Toledo area) UT must initiate a new LCA, post the Notice of Filing in the new worksite and file the LCA with the Department of Labor before the employee can begin work at the new worksite.

If the new worksite is in a different geographical area outside of the MSA, UT must initiate a new LCA, post the Notice of Filing in the new worksite and file the LCA with the Department of Labor AND also file a H-1B amendment petition with USCIS before the employee can begin work in the new location.

Please contact OISSS office or maryam.sediqe@utoledo.edu.

**H-1B NOTICE OF FILING**

**During the COVID-19 pandemic how can Departments provide notice of the (LCA) filing if a hard copy notices cannot be posted in the worksite?**

On or within 30 days before the date of an LCA filing, employers must provide notice of the LCA filing to its employees in the occupational classification in the area(s) of intended employment. Where a bargaining representative exists, the employer must provide notice of the LCA filing to the bargaining representative.

In the absence of a bargaining representative, the employer may provide hard-copy or electronic notice to its employees which must be available to employees for a total of 10 calendar days. The hard-copy notice must be posted in two conspicuous locations at each worksite (or place of employment).

If a hard copy of the notice of filing of LCA cannot be posted in two conspicuous locations at each worksite during this pandemic, and in general, the regulations allow employers to provide electronic notice of an LCA filing. For electronic notice, employers may use any means ordinarily used to communicate with its employees about job vacancies or promotion opportunities, including its website, electronic newsletter, intranet, or email. If employees are provided individual direct notice, such as by email, notification is only required once and does not have to be provided for 10 calendar days.
PREMIUM PROCESSING

Is premium processing still available with USCIS?

Effective March 20, 2020, due to COVID-19, USCIS temporarily suspended premium processing services for all I-129 (H-1B petitions, including cap-exempt petitions) and I-140 (Immigrant Petition for Foreign National Workers) petitions until further notice.

FORM I-9 EMPLOYMENT ELIGIBILITY VERIFICATION COMPLIANCE

Are there any changes with the Form I-9 compliance due to COVID-19?

Effective March 20, 2020 DHS announced some limited flexibility in requirements related to Form I-9 compliance. ICE announced that it will "exercise discretion to defer the physical presence requirements associated with Employment Eligibility Verification (Form I-9)," but only for "employers and workplaces that are operating remotely." ICE notes that "[i]f there are employees physically present at a workplace, no exceptions are being implemented at this time for in-person verification of identity and employment eligibility documentation for Form I-9."

INTERNATIONAL TRAVEL

What happens when the sponsored employee cannot travel to the U.S. to start work?

If UT offered employment to a foreign national who is still in their home country and sponsored their H-1B visa and the employee is not able to enter the United States to begin employment due to travel or visa restrictions, UT can allow the employee to work remotely, hold the offer open for as long as practical, or withdraw the offer. Please contact OISSS to discuss this issue further.

What are the international travel restrictions due to COVID-19?

The U.S. government has implemented the following travel restrictions and procedural changes:

- As of March 18, 2020 “in response to worldwide challenges related to the outbreak of COVID-19, the Department of State is suspending routine visa services in most countries worldwide." General suspension of visa services.

- Entry to U.S. from Canada and Mexico through Land Ports of Entry limited to “Essential Travel”

- The Department of State provides links to country-specific information related to COVID-19. COVID-19 Country Information from DOS visa office

- You can find more information here on COVID-19 Restrictions on U.S. visas and Entry.
Can a H-1B employee request for Leave of Absence (LOA) if the H-1B employee is currently in a travel restricted country and cannot return due to the travel restriction?

A leave of absence (LOA) may be possible only in limited circumstances and after prior approvals from stakeholders, OISSS, HR, and other relevant UT offices. In order to ensure compliance with immigration regulation, OISSS must review and approve LOA requests for H-1B employees before the LOA can take place.

Please contact OISSS and maryam.sediqe@utoledo.edu.

What are the Impacts of COVID-19 travel restriction on foreign nationals traveling?

China Travel: Effective February 2, 2020, the Presidential Proclamation suspended entry into the United States of all immigrants, nonimmigrants, and other non U.S. citizens “who were physically present within the People’s Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, during the 14-day period preceding their entry or attempted entry into the United States.” The travel restriction does not apply to those individuals who are:

1. any lawful permanent resident of the United States;
2. the spouse of a U.S. citizen or lawful permanent resident;
3. the parent or legal guardian of a U.S. citizen or lawful permanent resident, provided that the U.S. citizen or lawful permanent resident is unmarried and under the age of 21;
4. sibling of a U.S. citizen or lawful permanent resident, provided that both are unmarried and under the age of 21;
5. a child, foster child, or ward of a U.S. citizen or lawful permanent resident, or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications;
6. traveling at the invitation of the United States Government for a purpose related to containment or mitigation of the virus;
7. C (transit or D (air or sea crewmember) nonimmigrants seeking entry into or transiting the United States pursuant to an A-1, A-2, C-2, C-3 (as a foreign government official or immediate family member of an official), G-1, G-2, G-3, G-4, NATO-1 through NATO-4, or NATO-6 visa;
8. any immigrant, nonimmigrant, and other non-U.S. citizen whose entry would not pose a significant risk of introducing, transmitting, or spreading the virus, as determined by the CDC Director, or his designee;
9. any immigrant, nonimmigrant, and other non-U.S. citizen whose entry would further important United States law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees based on a recommendation of the Attorney General or his designee; or
10. any immigrant, nonimmigrant, and other non-U.S. citizen whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees.
**Iran Travel:** Effective Monday March 2, 2020, the Presidential Proclamation suspended entry into the United States of all immigrants, nonimmigrants, and other non U.S. citizens who “were physically present within the Islamic Republic of Iran during the 14-day period preceding their entry or attempted entry into the United States.” The travel restrictions do not apply to those who are listed in items 1-11 above.

**Schengen Area travel:** Effective March 13, 2020, the Presidential Proclamation suspended entry into the United States of all immigrants, nonimmigrants, and other non U.S. citizens who “were physically present within the Schengen Area during the 14-day period preceding their entry or attempted entry into the United States.” The travel restrictions do not apply to those who are listed in items 1-11 above.

**United Kingdom and Ireland travel:** Effective March 16, 2020, the Presidential Proclamation suspended entry into the United States of all immigrants, nonimmigrants, and other non U.S. citizens who “were physically present within the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland during the 14-day period preceding their entry or attempted entry into the United States.” The travel restrictions do not apply to those who are listed in items 1-11 above.

**Note:** if you did not travel in the travel-restricted countries, the travel restrictions may not apply to you. However, due to COVID-19 situation changing on daily bases, conditions can change dramatically. Please check travel restriction guidelines with the Department of State and CDC’s COVID-19, travel.