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# **Information Packet for H1B Status**

## **Introduction:**

International Faculty & Scholars (IFS) at the University of Arizona (UA) has prepared this packet of information to assist hiring departments at UA with the process of requesting the preparation an H-1B petition for adjudication by U.S. Citizenship & Immigration Services (USCIS) on behalf of Foreign Nationals (FN) they wish to hire.

The process is lengthy and complex, involving various federal government agencies. In order to ensure that everything goes smoothly, it is extremely important to read the materials in this packet very carefully, in its entirety, and to follow the instructions. This will avoid delays in the preparation of the petition for submission to USCIS.

Please be advised that any estimated processing times referenced in this packet are subject to change without notice due to changes in the regulations and/or backlogs within a particular government agency. IFS cannot control delays of this nature and therefore cannot guarantee an adjudication date. Please see [www.uscis.gov](http://www.uscis.gov) for the most current published processing times. IFS cannot and will not guarantee favorable adjudication of any petitions.

If you have any questions or need additional information, please call 520-626-6289, or email at [uaifs@email.arizona.edu](mailto:uaifs@email.arizona.edu).

## **Basic H-1B Classification Information:**

- H-1B status is used to employ professionals temporarily for a maximum period of six (6) years, filed in increments of no more than three (3) years each. Since this six-year limit is strictly enforced, it is important to plan accordingly. It may be possible to begin another six-year period as an H-1B visa holder, but only after the individual has spent at least one year outside the United States.
- Each H-1B petition may be for a period of up to three (3) years not to exceed six (6) years cumulatively. However, an employer may not sponsor a FN for a period of time that exceeds guaranteed funding. If funding can only be guaranteed for one (1) year, then the hiring department may seek to extend the FN's status each year based on available funding. A petition will not be filed unless the department guarantees funding for the period requested.
- The position must require a minimum of a bachelor's degree and the FN must possess at least a bachelor's degree or its equivalent in the field in which s/he is seeking employment. We cannot file an H-1B for a position requesting less than a bachelor's degree. FNs with a bachelor's equivalent in work experience will be required to provide a credential evaluation, at their own expense, documenting work experience equivalent to a bachelor's degree.

- H-1B status is employer specific. Therefore, the FN may only work for UA, the employer sponsoring their status. However, the FN may have H-1B status for more than one (1) employer, which allows for concurrent employment.
- H-1B status recognizes dual intent. This means that the FN may apply for permanent residency (PR) while in H-1B status. For information regarding PR, please see the PR information packet on the IFS website.
- Spouses and unmarried children under the age of 21 of H-1B visa holders are considered dependents and are eligible for H-4 status. H-4 visa holders are only eligible to stay in the United States while their H-1B spouses or parents are in the United States maintaining the terms and conditions of their H-1B status. If already in the United States, [Form I-539](#) for dependent family members must be submitted with the H-1B petition. If outside the United States, Form I-539 is not required. Completing and filing Form I-539 is the sole responsibility of the FN.
- Dependent family members in H-4 status are not eligible to work or volunteer, however, may study in the United States (full-time or part-time) for the duration of the H-1B's period of stay.
- The FN will receive a copy of his/her certified Labor Condition Application (LCA) upon receipt of H-1B status, as required by law. The certified LCA shows the FN's actual wage (what s/he is actually being paid) and the PW (what the DOL has determined to be the appropriate wage for the position). If the FN is not receiving the actual wage, equaling 100% or more of the PW listed on the LCA, s/he must contact IFS immediately.
- As H-1B status is employer specific, the FN may not accept compensation, including honoraria, from any other entity.
- Individuals in H-1B status invited to give a lecture, collaborate, conduct research or present at other institutions can receive reimbursement for reasonable living and transportation costs only.
- Individuals in H-1B status are required to leave the United States on or before the end date on their Form I-94. When an individual is admitted to the United States in H-1B status, a grace period of 10 days may be given at the discretion of an immigration officer at the port of entry. The 10-day grace period is indicated on the individual's Form I-94.

### **H-1B Extension Information:**

- The H-1B extension process is identical to an initial H-1B petition in terms of paperwork and preparation. An H-1B extension petition requires a new prevailing wage and a new labor condition application (LCA) along with new supporting documents. A petition must be filed before the current H-1B status ends in order to allow an individual to maintain status and continue to remain on payroll.
- The earliest an H-1B extension petition can be filed with USCIS is 6 months prior to the end date of the current H-1B status. If a petition is "timely filed" (USCIS receives the petition prior to the H-1B's current expiration), the individual in H-1B status is authorized to continue to work and be paid for up to 240 days after the expiration of his/her current H-1B status.
- Once the extension petition is approved by USCIS, individuals traveling abroad may need to visit a U.S. Embassy or Consulate to get a new H-1B visa stamp before returning to the United States.

- H-1B regulations allow individuals already holding H-1B status to begin employment with a new employer once the new employee's petition is received by USCIS. This means that individuals may begin new employment before the petition is approved by USCIS, but no earlier than the start date of the petition.

### **H-1B Transfers - Coming to UA from Another Employer:**

- The H-1B change of employer process is identical to an initial H-1B petition in terms of paperwork and preparation.
- The H-1B visa is employer specific, which means that an individual who has an H-1B approval from another employer is not automatically eligible to work at the University of Arizona. A new petition must be filed by the University of Arizona.
- Since H-1B regulations allow an individual holding H-1B status with another employer to begin employment with UA once the new petition is timely filed with USCIS, an individual may begin employment before receiving the new H-1B I-797 Approval Notice. IFS will notify the FN and the sponsoring department when the H-1B I-797 Receipt Notice is received.

### **Department Information for H-1B Status:**

**Who qualifies for H-1B status?** The position offered must be a “specialty occupation,” which is an occupation that requires “theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation,” and either:

- A baccalaureate or higher degree (or its equivalent) in a specific academic discipline as the standard minimum requirement for entry into that particular position; and/or
- A full state license to perform the occupation granted after passage of normal professional tests and requirements (i.e., medical license).

### **Foreign medical school graduates seeking patient care must show that they:**

- Possess the necessary state licensure to practice in the manner for which the position calls (except training positions); Have passed one of the following: 1) the FLEX exam; 2) Steps 1, 2, & 3 of the U.S. Medical Licensing Examinations (USMLE); or 3) Parts I, II, & III of the National Board of Medical Examiners (NBME) certifying examinations;
- Have competency in written and oral English as evidenced by the passage of the ECFMG English proficiency test; or
- Is a graduate of a school of medicine accredited by the Liaison Commission on Medical Education (LCME).

### **Funding information:**

H-1B status may be sponsored for up to three (3) years at a time, not to exceed a total of six (6) years. UA may not sponsor for a period of time longer than the salary can be guaranteed. According to the Code of Federal Regulations (CFR), the employer is obligated to pay “at least the Actual Wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the Prevailing Wage Level for the occupation in the area of employment, whichever is higher.” [20CFR §730].

**Labor Condition Application (LCA) requirements:** The UA must certify on the LCA that the following conditions are met:

- The employment of the H-1B nonimmigrant will not adversely affect the working conditions of employees similarly employed in the area;
- On the date that the application to the DOL is signed and submitted, there is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation in which the H-1B nonimmigrant will be employed at the place of employment. If such a strike or lockout occurs after the application is submitted, UA will notify ETA within 3 days of the occurrence of such a strike or lockout, and the application will not be used in support of a petition filed with USCIS for an H-1B nonimmigrant to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased;
- A copy of the application has been, or will be, provided to each H-1B nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which the H-1B nonimmigrant will be employed; **and**
- A notice of filing has been posted and was/will remain posted for ten (10) working days in at least two (2) conspicuous locations where the H-1B nonimmigrant will be employed.

### **Change in Employment Status for H-1B:**

The H-1B is employer-specific, position-specific, and location-specific. Any change in the terms and conditions of employment or job title **must** be reported to IFS and may require filing an amended H-1B petition with (USCIS) before the change can occur.

**Change of title:** Because the H-1B is "job specific," a change of job title must be reported to IFS and may require approval by USCIS prior to the title change. Meaning, filing an amended H-1B petition with (USCIS) before the change can occur.

**Change in worksite:** Federal law permits an H-1B employee to work only at the worksite address(es) listed on the LCA that UA filed with USCIS. If a change in worksite is anticipated, contact IFS well in advance of the change. If the new worksite is within the geographic area of employment supported by the existing LCA, a copy of the LCA must be posted in two prominent locations at the new location for 10 business days. (“Geographic area” is the area within normal commuting distance of the worksite listed on the LCA.) If the new worksite is outside the geographic area of employment supported by the LCA, a new LCA and H-1B Petition (with filing fee) must be submitted to USCIS due to the new worksite. Geographic area is determined by DOL, **not** IFS or UA.

**Change of UA department:** A change of department may necessitate filing a new H-1B petition with USCIS. The employer may be able to avoid this if: 1) the appointment title does not change; 2) there is no

gap in paid employment; 3) the employee does not receive a reduction in salary; and 4) there are no changes in job duties. If all four of these conditions apply, IFS will determine whether filing an amended H-1B petition is required.

**Reductions in salary or FTE:** Reductions in salary or FTE below the rate reported to USCIS on the H-1B petition are **not** permissible. A change in employment (FTE) from full-time to part-time, or part-time to full-time, necessitates filing a new LCA and I-129 (with filing fee).

**On-leave status:** An H-1B generally maintains lawful visa status in the US only when maintaining paid employment. Before approving an unpaid leave for an employee in H-1B status, contact IFS. Any leave granted in one of these situations must be thoroughly documented in advance.

**Resignations and terminations:** The employing department must notify IFS in writing of an H-1B employee's resignation date or termination date. IFS will notify the DOL and USCIS that the employment has ended. The UA is liable for continued wage and benefit obligations up to the time the notice is received by USCIS.

**Change of employer:** A "portability" provision in the H-1B regulations allows an applicant who is already in H-1B status to begin working for a new employer as soon as USCIS receives the transfer request. An employee moving from one US employer to another who wishes to take advantage of H-1B portability must not leave his or her current paid position until the new employer's H-1B petition has been received by USCIS. Alternatively, the H-1B employee may depart the US and re-enter under the sponsorship of the new employer.

### **H-1B Fees:**

IFS Service Fees:

- **\$2,750** – H1B Petition, New & Transfers
- **\$2,350** – H1B Petition for Extension and/or Amendment
- **\$350** – Premium Processing.

**\*IFS fees MUST be paid by employer with an Internal billing eDoc.\***

**\*\*USCIS FEES BE ORDERED MY IFS OFFICE WITH THE ACCT# SUBMITTED ON THE CORRESPONDING EFORM WITHIN MYGLOABL PORTAL.\*\***

USCIS/DHS charge the following processing fees, which are subject to change, for H-1B petitions:

- **\$460** – H-1B/I-129 Form Fee. (MUST be paid by employer).
- **\$500** – Anti Fraud Fee. (MUST be paid by employer for all new, change of status, and transfer H-1B petitions filed. The fee is NOT required for extensions or amendments).
- **\$2,805** – Premium Processing Fee. H-1B petition is adjudicated within 15 calendar days.

## **H-4 Dependents:**

Dependents must complete Form I-539 to request H-4 dependent status. The I-539 Form Fee is **\$470** and is paid by the employee. Form I-539 must only include information about immediate family members (spouse and children) who are inside the United States at the time of filing. Instructions and Form I-539 may be downloaded from USCIS: <https://www.uscis.gov/i-539>

## **H-1B FAQs:**

**What is the H-1B work visa?** The H-1B visa is a nonimmigrant visa which allows foreign nationals to enter into the U.S. and perform services in a prearranged professional job. The job must be in a '**specialty occupation**' and must require a bachelor's degree as a minimum for entry into the field.

**What is 'specialty occupation' for the purposes of the H-1B visa?** A specialty occupation requires theoretical and practical application of a body of specialized knowledge along with at least a bachelor's degree.

**How long does it take to get an H-1B status?** The H-1B petition process can be lengthy. Anticipate three-six months, start to finish, or even longer. Contact IFS for current processing times.

**When should a petition to extend H-1B status be submitted?** If an employee is in the US and holds H-1B status, the application for extension of stay should be filed with USCIS as early as possible, up to six months prior to the expiration date of the existing I-797 Approval Notice. Note that it may take two to three months to assemble the petition documents. If USCIS receives the extension petition prior to the I-797 expiration date, the H-1B employee may continue working for 240 days while the petition is pending.

**Do changes in the job affect an employee's H-1B status?** Yes. It is very important that any potential change in employment status, (including change in salary, title, worksite location, host department, percentage of time worked, leave status, etc.) be discussed with IFS well in advance of the change.

**What is H-1B portability?** A "portability" provision in the H-1B regulations allows a beneficiary who is already in H1B status to begin working for a new employer as soon as that employer receives the I-797 Receipt Notice for the new petition from USCIS. If a FN is moving to UA and wishes to take advantage of H-1B portability, the FN should not leave their current paid position until notified that UA's petition has been received by USCIS.

**What if the H-1B employee has dependents?** The H-1B employee's dependents (spouse and unmarried children under 21 years of age) are eligible for H-4 status. If the family members are abroad, they obtain H-4 visas by presenting copies of the H-1B Approval Notice and proof of family relationship to the H-1B employee (marriage certificate for spouse and birth certificates for children) to the U.S. consulate. If the family members are currently residing in the U.S., they can obtain or extend H-4 status by filing Form I-539.

## **What are the differences between a Visa, a Visa Stamp, and a Visa Status?**

**Visa or Visa Stamp** - A U.S. nonimmigrant visa is issued in an individual's passport by a U.S. consul in a U.S. embassy or consulate outside the United States. A visa is used solely for the purpose of entry and reentry to the United States. The visa does not determine how long an individual may remain in the United States. Therefore, an individual may stay beyond the expiration date of a visa as long as the underlying immigration

document (I-20, DS-2019, or I-797) is valid. Most visa stamps are for multiple entries. It is not possible to renew a visa stamp in the United States.

International scholars at UA should use the appropriate visa related to their current activities at UA (H-1B, O-1, research scholar). Use of a "visitor" or "tourist" visa (B-1/B-2) may have serious consequences when used inappropriately. Once the proper visa expires it will be necessary to apply for a new visa stamp at a U.S. embassy or consulate when traveling outside the United States.

**Visa Status** - Upon entering the United States, an I-94 record is established. The I-94 record is the arrival/departure document indicating the visa status of an individual and the length of time an individual may remain inside the United States. The I-94 record for an individual in H-1B status will detail the actual expiration dates by which time the individual is expected to leave the United States or apply for an extension of status. An individual's visa status is also indicated on a Form I-797.

## What are the penalties for violation of the Federal Regulations?

### Filing an LCA which misrepresents a material fact:

- Civil money penalty up to \$1,000/violation
- Notice to USCIS & ETA regarding debarment from H-1B program
- Any other actions the DOL deems appropriate
- Up to \$10,000 fine and/or 5 years' imprisonment [18 U.S.C. 1000]

### Failure to pay required wages:

- Back wages to H-1B employee
- Civil money penalty up to \$1,000/violation
- Notice to USCIS & ETA regarding debarment from H-1B program
- Any other actions the DOL deems appropriate

### Failure to provide required working conditions:

- Civil money penalty up to \$1,000/violation
- Notice to USCIS & ETA regarding debarment from H-1B program
- Any other actions the DOL deems appropriate

**NOTE: Willful misrepresentation** of a material fact on the LCA will lead to civil monetary penalties ranging from \$5,000-\$35,000 and possible debarment from the H-1B program for a minimum of two (2) – three (3) years.

Other violations such as filing an LCA during a strike/lockout, **failure to provide required notice**, failure to **be specific** on the LCA, failure to make available for public examination the LCA and necessary documentation, failure to retain documentation as required, and failure to otherwise comply with the LCA regulations may result in:

- Civil money penalty up to \$1,000/violation
- Any other actions the Department of Labor deems appropriate