

## **H-1B Frequently Asked Questions**

### **What type of employee is eligible to apply for an H-1B visa?**

Only employees holding at least a bachelor's degree in a specific specialty occupation and involved in the "theoretical and practical application of a body of highly specialized knowledge" are eligible for the H-1B visa. Generally faculty positions meet this criterion, as do most professional positions.

### **Who applies for the H-1B: the employee or the department?**

Once a candidate has been selected for employment and that person indicates the need for sponsorship of an H-1B visa, the department should notify the Office of General Counsel who will ultimately submit an I-129 Nonimmigrant Worker petition on behalf of the University. For the purposes of the H-1B, the University is the petitioner and the employee is the beneficiary.

### **What is the cost of the petition and who pays it?**

The petition fee is \$460. An additional one-time fee of \$500 is required for each new H-1B beneficiary (such fee does not have to be paid when applying for an extension of H-1B status). As provided by federal law, the University department must pay these fees.

### **How long does the petition take?**

Currently it takes USCIS several months to process an H-1B petition. It is advisable to start the process as soon as possible by contacting the Office of General Counsel at the earliest possible moment. In extreme emergencies, an expedited processing option is available and will cost an additional \$1,410.

### **How long is an approved H-1B valid?**

Approvals can be granted for up to a three-year period, for a total of six years. Additional renewals are permitted, but are dependent upon very specific criteria.

### **Great, we filed the petition. Can my employee start now?**

For first-time employees, the answer is no. Simply filing the petition does not provide the necessary work authorization required for completing the Form I-9 (the Employment Eligibility Verification form completed by ALL employees prior to beginning employment). The University department must wait until an approval is received (Form I-797) before the employee begins work.

**But my employee has already been here in H-1B status. Are extensions different?**

Generally, an employee may continue working if the University files Form I-129 (the form requesting an extension of the H-1B status) before the date of expiration for the current H-1B. After the University files the petition requesting an extension, the employee may continue working for up to 240 days with only a USCIS receipt notice. This rule also applies to employees hired by the University who currently work at another university in H-1B status.

**I have just been informed that the petition has been approved and received the employee's Form I-797 Notice of Approval. What now?**

The employee is entitled to the original I-797 Notice of Approval and should receive a copy of the original I-129 petition filed and the accompanying Labor Condition Application. Once approved, there are two options:

1. If the employee has adjusted from another status and has remained in the United States, the employee usually does not have to leave the country to “get their visa stamped. However, should the employee ever leave the country, the employee would be required to set up an appointment at a U.S. consulate abroad to get their visa stamped prior to re-entry.
2. If the employee is outside of the United States, the I-129 petition can be filed in a way that the approval will be forwarded to the consulate of the employee's choice where it will be available for inspection once the employee has made an appointment with the consulate.

It is not recommended that employees travel outside the country while the H-1B petition is pending as the absence may be interpreted by USCIS to mean that the petition is abandoned by the employee and University.

**If the employee has not “had their visa stamped,” what should the employee take to their interview at the consulate?**

- The original I-797 Notice of Approval;
- A copy of the original I-129 petition filed by the University (including the signed LCA);
- Copy of the offer letter from the University;
- All other documents listed on the website for the U.S. consulate where you will be applying.

**The employee’s petition is approved and his/her visa is stamped. Can the employee begin work now?**

Once the employee has properly filled out the Form I-9 (Employment Eligibility Verification Form – required of all employees) and other required Human Resources forms, the employee may begin work. If the employee has received an H-1B extension, the employee should immediately contact Human Resources to update his or her I-9 form

**What happens if the employee changes his/her home address?**

The employee must report all address changes to USCIS by filing Form AR-11, found at [www.uscis.gov](http://www.uscis.gov), within 10 days of moving.

**An employee in H-1B status is about to be promoted. Does the University need to file a new (or “amended”) H-1B?**

For promotions within the same job (i.e. “assistant” position to “associate” position), it is not necessary to file a new H-1B petition unless the job duties are “materially different” or can be considered a different occupation requiring different education/training.

**I plan on terminating the employment of an employee on an H-1B visa. What do I need to do?**

Before terminating any employee you should always consult with the Office of the Provost and/or Human Resources to utilize the University’s resources and processes, as well as to ensure that proper University protocols are followed.

In addition to usual University processes, the University must provide the terminated H-1B employee with reasonable return transportation costs to their home country. The University is not required to provide any transportation costs for the employee’s dependents. Furthermore, this obligation does not apply to employees on a term contract who are released after the term ends or to employees who voluntarily leave their position early.

**This is so much to remember. Who can I call to ask questions about H-1B cases?**

The Office of General Counsel currently coordinates employment immigration services for the University. You can reach the office at 574-631-6411 (1-6411 if on campus).

The Office of General Counsel can only provide advice to University employees on issues regarding University employment. The Office will not provide personal

immigration advice, nor will it assist with individual personal immigration matters unrelated to University employment (other than employment-based permanent residence immigration, i.e. PERM and I-140 issues).

For all personal immigration matters, the employee should contact a private immigration attorney (preferably one affiliated with AILA, the American Immigration Lawyers Association).

*April 2015*