

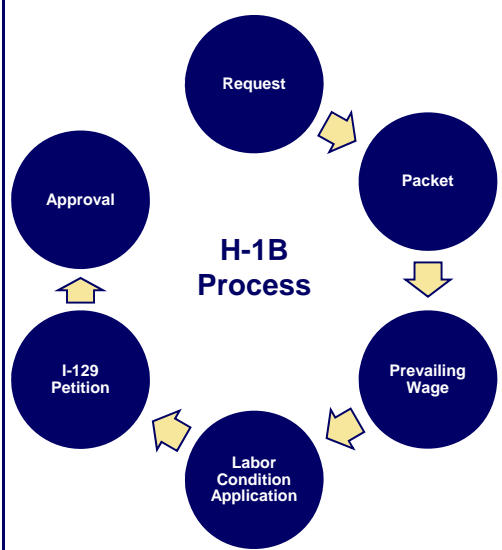
# H-1B APPLICATION PROCESS

## Hiring Department Guide

The Office of General Counsel works with the United States Citizenship and Immigration Services (USCIS) to obtain the appropriate immigration status for non-U.S. faculty and staff members who are employed by the University.

### H-1B Status

H-1B status is designed for temporary workers who hold advanced degrees and are employed in specialty occupations.



### Hiring Department Responsibilities

1. Initiate Immigration Request
2. Complete Application Packet
3. Notify OGC of Any Changes
4. Notify OGC of Departure

### Immigration Request Form

To begin the immigration process, the hiring department submits an *Immigration Request Form* to the Office of General Counsel. This form allows the General Counsel to evaluate the appropriate immigration status required.

<http://gencoun/immigration.nd.edu>

### Application Packet

After reviewing the *Immigration Request Form*, General Counsel will notify the hiring department of the appropriate immigration status to be petitioned for.

Generally, the packet requires the following:

- ✓ *Prevailing Wage Questionnaire*
- ✓ *Deemed Export Attestation*
- ✓ *H1B Beneficiary Information Form*
- ✓ *Required Documents from H1B Beneficiary*
- ✓ *I-129 Form*
- ✓ *Checks for Applicable Fees*

When the hiring department gathers all of the required items, the packet should be submitted to the Office of General Counsel. Upon receipt, preparations for submitting the H-1B petition will begin.

### Guidelines

*If employee is outside of the U.S., start the H-1B application process nine months before the employee will begin work.*

*For an extension of a current H-1B, start the process four to six months before the expiration.*

*Be sure that the position has been formally offered to and accepted by the applicant.*

*Incomplete application packets will delay the petition process.*

*The employee is not authorized to begin work until an H-1B approval notice is received.*

Upon receipt of a complete application packet, the Office of General Counsel must complete three steps in order to obtain an H1B approval:

### Prevailing Wage Determination

In order to submit an H-1B petition, the USCIS requires a determination that the appropriate prevailing wage is offered to the faculty or staff member. The information provided on the Prevailing Wage Questionnaire is used to submit the application for determination online.

The prevailing wage determination must be received from the U.S. Department of Labor before General Counsel may proceed to the next step in the process. The time frame for a response varies from anywhere between two weeks and several months.

### Labor Condition Application

Once the prevailing wage determination has been received, a Labor Condition Application (LCA) is then filed with the U.S. Department of Labor attesting that a prevailing wage is being offered. The LCA must be certified and filed with the I-129 petition.

Before the LCA can be submitted, the hiring department, along with the Office of Human Resources, must notify General Counsel that the job posting for the position has been posted in the department.

The LCA certification is usually received within two weeks.

### I-129 Petition

The H-1B petition (I-129) is then prepared by General Counsel and submitted to the USCIS via Federal Express.

| USCIS Approval Notice                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | FAQ's                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 6. <i>Great, we filed the petition. Can the employee start now?</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p>USCIS will notify General Counsel regarding approval or denial of an H-1B petition. Generally, it may take 3-4 months in order to receive a response. H-1B petitions using premium processing will receive a response within 15 days.</p> <p>General Counsel will contact the faculty or staff member to pick up the packet of information needed for him or her to take to Human Resources to complete or update the I-9 employment verification form. If the employee is not currently in the country, the hiring department will be contacted to pick up the materials to send to the employee.</p>                                                                                                                                                                                     | <p><b>1. Who is eligible to apply for H-1B status?</b></p> <p>Only employees holding at least a bachelor's degree in a specific specialty occupation and involved in a position requiring highly specialized knowledge are eligible for H-1B status.</p> <p><b>2. Who applies for the H-1B: the employee or the department?</b></p> <p>Once a candidate has been selected for employment and that person indicates the need for sponsorship of an H-1B visa, the department should submit a request for immigration services to the Office of General Counsel. The department will then receive instructions to complete the appropriate application packet.</p> <p><b>3. What is the cost of the petition and who pays it?</b></p> <p>The petition fee is \$460. An additional one-time fee of \$500 is required for each new H-1B petition (not extensions.) The hiring department must pay these fees.</p> <p><b>4. How long does the petition take?</b></p> <p><i>It can take several months for the USCIS to process an H-1B petition. However, that can fluctuate greatly depending upon demand. In extreme emergencies, an expedited processing option is available and will cost an additional \$1,410. Either the hiring department or the employee can pay for this.</i></p> <p><b>5. How long is an approved H-1B valid?</b></p> <p>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.</p> | <p>For first-time employees, the answer is no. Simply filing the petition does not provide the necessary work authorization. The University department must wait until an approval is received (Form I-797) before the employee can complete the required I-9 paperwork to begin work.</p> <p><b>7. But my employee has already been here in H-1B status. Are extensions different?</b></p> <p>Generally, an employee may continue working if the University files the petition form requesting an extension of the H-1B visa before the date of expiration. After the University files the petition requesting an extension, the employee may continue working for up to 240 days with just the USCIC receipt notice.</p> <p>H-1B extensions require the same paperwork and steps as the original H-1B request. Be sure to provide the Office of General Counsel six months notice prior to the expiration of a current H-1B.</p> |
| Special Situations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>1. Prevailing Wage Issues</b><br/>H-1B applicants are required to be paid the prevailing wage. Hiring departments may have to adjust the wage offer if the prevailing wage is not met.</p> <p><b>2. Portability</b><br/>A non-immigrant who was previously issued an H-1B may begin working for a new H-1B employer as soon as that new employer files an H-1B petition on the non-immigrant's behalf and receives a USCIS receipt notice.</p> <p><b>3. Early Termination by ND</b><br/>In addition to the usual University processes, the University must provide the terminated H-1B employee with reasonable return transportation costs to his or her home country.</p> <p><b>4. H4 Dependents</b><br/>Dependents in H4 status are not authorized to work in the United States.</p> | <th data-bbox="1058 1276 1560 1339">Contact Us</th> <div data-bbox="1058 1339 1560 1900"> <pre> graph TD     Request((Request)) --&gt; Packet((Packet))     Packet --&gt; PrevailingWage((Prevailing Wage))     PrevailingWage --&gt; LaborConditionApplication((Labor Condition Application))     LaborConditionApplication --&gt; I129Petition((I-129 Petition))     I129Petition --&gt; Approval((Approval))     Approval --&gt; Request   </pre> </div> <p data-bbox="1058 1900 1560 2045">Office of General Counsel<br/>631-6411 or <a href="mailto:gencoun@nd.edu">gencoun@nd.edu</a></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Contact Us                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |