



Office of Foreign Students and Scholars

INFORMATION AND PROCESSING OF H1-B VISAS

General Information

The H-1B visa category is for foreign nationals who are offered temporary employment in the United States to render services in “specialty occupations.” An offer of employment is required from an U.S. employer who must file the petition. A foreign national cannot self-petition for an H-1B visa. H-1B employment must be temporary, even if the foreign national may be coming here to fill a permanent position. There must be an employer-employee relationship (i.e., the employer must pay a regular salary or grant payments to the alien). The foreign national must be qualified to fill the H-1B visa position. He/she should have at least an U.S. bachelor's degree (or equivalent) and the appropriate education level in the field related to the nature of job.

H-1B visas are employer specific. Employment is limited to the sponsoring H-1B employer and for employment specified in the H-1B petition. H-1B visas can be for full-time or part-time employment.

J visa holders who are subject to 212 (e) 2-year foreign residency requirements are not eligible for H-1B visa. Unless the individual is able to obtain a waiver of the 2-year requirement, the only non-immigrant visa option for individuals in this category is an O visa.

The H-1B visa holder and dependents must be keep valid passports at all times throughout their stay in the U.S.

H-1B Visa Application Process

A foreign national seeking an H-1B visa should obtain an H-1B Information and Questionnaire Packet from the Office of Foreign Students and Scholars (OFSS). The questionnaire should be completed and promptly returned to OFSS with three (3) copies of all requested documents.

Current USCIS filing fee for initial or extension of H-1B visa is \$320. The fee for premium processing is \$1,000. All checks should be made payable to “US Citizenship and Immigration Services” or “USCIS.” As of March 8, 2005, all employers will be required to pay a mandatory “Anti Fraud Fee” of \$500 in addition to the above stated fees for the initial application. The \$500 fee must be paid by University of Delaware (not the H-1B applicant) and must be payable to the “Department of Homeland Security.”

H-1B Reform Act of 2004

Beginning March 8, 2005, the H-1B Reform Act of 2004 will include a mandatory \$500 Anti-Fraud fee for each initial H-1B application. This fee WILL NOT affect applications for extension of H-1B visa holders with the same employer.

The \$500 fee is in addition to the regular processing fee of \$320 and the optional \$1000 fee for Premium Processing. The employee cannot pay the anti-fraud fee either directly or through salary deduction. U.S. Citizenship and Immigration Services consider this fee to be an employer business expense that cannot be

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passed on to the alien beneficiary (employee). Research funds cannot be used for the purpose of paying application fees or the Anti-Fraud fee. A faculty sponsor or department, laboratory, or center can only sponsor an employee for an H-1B visa if the \$500 fee can be paid (using unrestricted funds, discretionary funds, or other sources meeting the guidelines). A University of Delaware check for \$500, payable to the Department of Homeland Security, should be submitted with the other required application documents. The sponsoring department must pay the fee for any tenured or tenure-track faculty member at the time that an H-1B petition is filed.

Processing Times for H-1B Visas

H-1B visas are processed at the USCIS regional processing centers. The USCIS Vermont Service Center processes cases filed in the Northeastern part of the U.S. including Delaware. The current processing time for both initial H-1B visa and H-1B visa extensions is approximately three (3) months. Cases processed under premium processing (extra \$1,000 filing fee) are usually processed within 15 days from receipt by USCIS. Educational institutions are not subject to the current 65,000 annual H-1B visa quota that begins at the beginning of each federal government fiscal year on 1st October. An H-1B applicant for extension may continue to work and be paid for 240 days while the application is pending.

Degree Equivalency

Generally, specialty occupations are those that require at least a bachelor's degree or equivalent academic credits and/or work experience. USCIS will accept three years of professional experience as equivalent to one year of university education (i.e., two years of university education + 6 years of professional experience = a four-year university degree). USCIS will accept an earned bachelor's degree + five years of professional experience to be equivalent to a master's degree. There is no equivalent accepted for a doctorate or professional degree; it must be an earned degree. An evaluation from a professional credentials evaluation agency may be required to verify foreign degree equivalency to U.S. degrees.

Prevailing Wage

A foreign national must be paid the prevailing wage for H-1B employment. Prevailing wage is what is normally paid for similar work in the geographic area of employment. Unless the prevailing wage is offered, an H-1B visa cannot be processed. Please contact the Office for Foreign Students and Scholars (OFSS) for information on the acceptable prevailing wage for the position offered. Academic units are required to provide OFSS with documentation when the H-1B worker's salary is substantially changed.

Change of Employers

If the H-1B visa holder changes employers, the new employer must obtain approval of its own new H-1B petition from the USCIS. It is possible to have more than one concurrent H-1B visa. Under current USCIS

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regulations a current H-1B visa holder may begin to work with a new H-1B employer as soon as the new employer files a non-frivolous H-1B Visa petition for the new employment. The new employer and beneficiary do not have to wait for the new petition to be approved by the USCIS for the new employment to begin. However, the H-1B visa holder must be in lawful status; engaged only in authorized work; and must be on a current H-1B status. If a foreign national is currently in a visa status other than H1-B, he/she cannot begin work with an H-1B employer until USCIS approves the H-1B visa.

Duration of H-1B Visa

H-1B regulations allow a foreign national to hold H-1B status for up to six years. An employer may request up to three years on the initial H-1B petition, and extensions may be requested for a maximum period of three years for a total of six years.

There are some exceptions to the six-year limit on H-1B visas:

- a. When the alien's U.S. stays are intermittent, seasonal, or an aggregate of less than six months a year;
- b. Extension beyond six-years is permissible for H-1B visa holders for whom an alien labor certification application and/or Form I-140 Immigration Petition for Alien was filed and has been pending for at least 365 days before the extension is requested;
- c. The six years time limit includes periods of H-1B stay for previous employers and all time in the U.S. Upon completing six years stay in the U.S. in H status and if the H-1B visa holder and dependents are not eligible for any exception, he/she must reside in his home country for a period of one year before re-entering the US in the H-1B category.

Extensions of Stay for H-1B Visa Holders

An H-1B visa can be extended for up to a maximum of six years as discussed above. The extension process is basically re-applying for H-1B visa. Essentially updated versions of forms, letters and supporting documents that are submitted to USCIS for the initial H-1B visa have to be re-submitted to USCIS for the extension. An H-1B extension packet should be secured at the Office of Foreign Students and Scholars. H-1B/H-4 visa holders remain in legal status while the extension is being processed by USCIS and the H-1B visa holder can continue to legally work with the same employer while the H-1B visa extension is being processed by USCIS only if the extension is filed prior to the current expiration date.

On-Going Employer Obligation

If the employer terminates the H-1B worker prior to the end of the H-1B petition validity period, the employer is obligated to pay reasonable cost of transportation to the H-1B worker's last place of residence abroad. This requirement does not apply to dependents of the H-1B worker. If the H-1B visa holder terminates the employment, the employer does not have to pay for the return transportation.

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Travel While H-1B Visa is Being Processed

A foreign national who is not currently in H-1B visa status cannot leave the U.S. once the H-1B petition is filed with USCIS. If the person leaves while the initial H-1B is being processed, he/she will have to apply for the H-1B visa at a U.S. Consulate abroad rather than having his/her stay changed in the U.S. A current H-1B visa holder can travel while an extension is being processed provided the H-1B visa in the passport is still valid and he/she has the receipt for the extension.

Dependents of H-1B Visa Holder

Spouse and/or children (under 21 yrs old and unmarried) of an H-1B visa holder are admitted to the U.S. on H-4 visas. Family members are admitted for the same period of time for which the H-1B visa holder has been admitted. H-4 family members may study while remaining in the H-4 category but **MAY NOT** engage in any form of employment. When children under H-4 status turn 21, they are not considered "children" and are not eligible for the H-4 status. In order to remain in the U.S., dependents must change to another non-immigrant status such as F-1 for full-time students. A dependent of an H-1B visa holder can maintain an appropriate visa status separate from H-1B visa holder.

H-1B/H-4 Visa in the Passport

An H-1B visa holder must have a valid H-1B visa in the passport to re-enter the U.S. after travel abroad, except from short trips (less than 30 days) to Canada and Mexico. The initial and renewals of H-1B/H-4 visa must be obtained at an U.S. Consulate abroad.