

H-1B Visas

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H-1B Visa

- Temporary “specialty” worker
- 6-year maximum, 3 year maximum in one petition
- Government Agencies involved
 - US Citizenship & Immigration Services
 - US Department of Labor
 - US Department of State

Roles in Application

- Employer is the applicant
 - Responsible for content of application
 - Fines, other penalties apply to employer
- Employee is the beneficiary
 - Only employer or attorney may inquire about pending case
 - Must maintain employment to maintain status

Specialty Occupation

- Job must require a Bachelor's degree as a minimum for entry into the field
- Employee must have required degree and any required licenses
- Job must relate directly to academic degree

H-1B Expenses

- Basic filing fee \$460 anti-fraud fee \$500; training fee \$1500 (\$750 for small employers – less than 25 employees)
 - Cap exempt employers don't pay training fee
- Premium processing \$1410 (if available)
- Attorneys fees
- Who pays fees/costs?
 - Prince George's County public schools ordered to pay over \$5 million in back wages/penalties for passing fees on to H-1B workers. April 4, 2011 Dept. of Labor news release.

Application Process

- Labor Condition Application
- I-129 petition to US Citizenship & Immigration Services
- Change/extension of status vs. consular processing
- Status vs. Visa

H-1B Wages

- Employers must pay “prevailing” or “actual” wage, whichever is higher.
- Prevailing - Average wage paid to similar workers in same geographical area
- Actual - Wage paid by particular employer to similar employees
- Benefits must be offered to H-1B employees on same basis as US workers

Changing H-1B Employer

- Employment permitted upon filing of additional H-1B petition (prior to approval – but if petition later denied, stop work.)
- Must already have H-1B status
- H-1B entry visa remains valid (not employer specific)

Special H-1B Considerations

- Changes in employment, same employer
- No “benching”
 - bona fide leave ok
- Early employment termination
- US CIS “site visits” putting \$500 anti-fraud fees to work
- Employer/Employee relationship issues
 - Self employment?
 - 3rd party worksites – who controls work?

H-1B Annual Cap

- 65,000 “new” H-1B’s under current law (20,000 exemptions for US advanced degrees)
 - Fiscal year is October 1 - September 30
 - File April 1 for October 1 start date (if cap-subject)
- Quotas met first week in April every year
 - April 1, 2016 (236,000 received)
 - April 1, 2017 (199,000 received)
 - April 1, 2018 (190,000 received - over half with US Master’s or higher)

Exemptions from Cap

- Colleges & Universities
- Non profit research institutions
- Government research institutions
- Organizations “affiliated with” colleges/universities (rules apply)
- Where employment occurs “at” exempt organization and related to exempt organizational mission

F-1 OPT and H-1B

- Automatic OPT extension through Sept. 30 if H-1B pending or approved
 - H-1B must be filed before grace period expires
 - If OPT expires before April 1: no OPT extension
 - H-1B pending past Oct. 1 = gap in work authorization
- Additional OPT extension for STEM graduates
 - OPT for additional 24 months
 - Numerous other requirements – E-verify, training plan, etc.
- Unemployment limited to 90 days (150 for STEM OPT) or loss of status results

Managing the Cap

- Alternatives to H-1B: TN, L-1, J-1
- Go home and return when able
- Work for multinational company – future L-1?
- Extend F-1 by enrolling in new academic program
- Apply for change to some other status
- Avoid H-1B altogether – F-1 to green card?

H-4 Dependents

- Change to H-4 or extension of H-4 requires additional US CIS form (I-539)
- No US CIS filing required if dependents outside the United States
- Need proof of relationship, i.e. marriage, birth certificates
- H-4 EAD eligibility likely to be revoked.

Dual Intent

- H-1B is temporary, non-immigrant visa
- No need to show residence abroad or non-immigrant intent, unlike F, J, B visas etc.
- Good choice for people intending to apply for permanent residence
- Travel and pending Adjustment of Status (I-485); advance parole not needed

Travel as H-1B

- Must have H-1B entry visa (except Canadian citizens)
- Carry I-797 Notice of Action (approval notice)
- Proof of job offer or ongoing employment - letter, pay statements etc.
- PIMS system verifies H-1B approval – can delay visa issuance
- Always check Customs & Border Protection I-94 website after travel. <https://i94.cbp.dhs.gov>

Travel to Canada/Mexico

- Entering US from Canada/Mexico is just like entering from any other country
- Exception – “automatic revalidation” allows entry using expired visa or visa of different kind following change of status.
 - Important: do not apply for a visa while in Canada/Mexico if relying on automatic revalidation for re-entry.

J Visa 2-year Rule

- Some J visa holders have 2-year home residence requirement
- Gov't financing, skills list, physicians
- Cannot have H visa or change status from J to other status, i.e. H-1B
- Cannot file I-485 permanent residence or immigrant visa applications
- Waivers sometimes available

Crimes and Immigration

Some crimes affect eligibility for a visa; some don't

Driving while intoxicated is getting strong attention lately

A single DWI arrest or conviction may result in cancellation of a visa or ineligibility for a visa for 12 months!

Don't drink and drive!

If a US consulate contacts you to travel from the US for a new interview, contact an attorney first.

Change to "Unlawful Presence"

- ◆ New USCIS policy to address perceived high rate of overstay of F, J, M visa holders; August 9, 2018.
- ◆ Unlawful presence begins:
 - ◆ Day after individual no longer pursues course of study or other authorized activity, or
 - ◆ Day after engaging in unauthorized activity (status violation – i.e. unauthorized employment.)
 - ◆ Day after completing program plus grace period
 - ◆ Day after IJ orders removal

Changes to H-1B?

- ◆ Discussions about changing H-1B classification to favor higher salaries, higher levels of education, change definition of “specialty occupation.” No official change on this.
- ◆ Changing how lottery operates – have employers pre-register for selection, run Master’s lottery first. This will go into effect next year (2020 filings.)

Questions?

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