



H-1B Visa: Process and Procedures

The H-1B, “specialty occupation” visa is the most commonly used visa for employment purposes. To qualify for an H-1B visa, the position must require the theoretical and practical application of a body of highly specialized knowledge. To approve an H-1B application, the USCIS requires the position to require a Bachelor’s level degree (or the equivalent) in a specialized field and the foreign national to possess a Bachelor’s degree (or equivalent) in this field.

An approval for H-1B status is company and position specific. Therefore, any time an individual changes employers, or there is a material change in the position, an employer must file a new H-1B petition on behalf of the foreign national.

The current law allows only 65,000 new H-1B approvals per year, with an additional 20,000 reserved for H-1B applicants who have Master’s or PhD degrees from US institutions. The USCIS fiscal year runs from October 1 through September 30. The USCIS will accept NEW H-1B filings on April 1 for an October 1 start date. However, only those individuals who are receiving H-1B classification for the first time (with some narrow exceptions for educational, research and governmental institutions) are counted toward the numerical cap. Therefore, the 65,000 cap does not limit the filing of extensions of stay for those wishing to work concurrently with one or more H-1B employers or those employers petitioning for a subsequent approval in H-1B status (based on either a change in employers, a change in positions at the same employer, or a simple extension of status).

The employer must file a Labor Condition Application (LCA) with the Department of Labor before filing the petition for H-1B non-immigrant classification with the USCIS. This application requires the employer to assert that it will pay the employee 100% of the prevailing wage for the position, that the position’s working conditions will not have an adverse effect on similarly situated U.S. workers, and that no labor dispute or lockout exists at the place of employment. A copy of this application must be conspicuously posted at the principal place of business. The application does not contain the employee’s name, but it does list the title of the position and the corresponding salary (which may be listed as a salary range).

If the H-1B petition is approved, it is valid for a period of three years, and the authorized stay may be extended for a maximum of six years. If an employer files a labor certification within 365 days of the foreign national reaching his or her six-year cap in H-1B status, the employee may be eligible to extend his or her status in one-year increments until the adjustment of status application is adjudicated. Unlike some other non-immigrant classifications, H-1B status allows H-1B visa holders to have both non-immigrant and immigrant intent. In other words, the foreign national does not need to prove that s/he has a foreign residence to which s/he intends to return. This allows the foreign national to maintain H-1B status while simultaneously filing an application for permanent residence without jeopardizing his or her H-1B status.

Individuals who have held H-1B status in the past and are in the US pursuant to a lawful entry may be eligible to begin working for a new H-1B employer upon the filing of the new H-1B application, pursuant to a recent law allowing H-1B “portability.” However, eligibility for portability is limited, and individuals and companies seeking to benefit from this provision should confirm that this law is applicable in their situation. Those

candidates who do not qualify for portability must wait for the USCIS to approve the H-1B petition before commencing employment.

Spouses and children of H-1B visa holders are eligible for H-4 classification. However, H-4 visa holders are not authorized to work in the US.

FILING FEES

FORM I-129, Petition for Non-immigrant Worker	\$320
ACWIA Education and Training Fee (must not be paid by employee): Certain educational institutions and nonprofit or government research organizations are exempt from the Education and Training Fee.	\$750 – less than 26 full-time employees OR \$1,500 – more than 26 full-time employees
USCIS Fraud Detection and Prevention Fee	\$500
Form I-907, Request for Premium Processing in 15 calendar days (Optional)	\$1,000
Form I-539, Application to Extend H-4 Status	\$300

STEPS FOR APPLYING FOR H-1B

- 1) The company and the prospective employee complete an on-line questionnaire and forward all relevant documentation/information to CLG.
- 2) CLG evaluates the materials for H-1B dependency and other eligibility criteria; develops case filing strategy.
- 3) CLG obtains an educational equivalency evaluation of academic degree (if gained from a non-US institution) and/or experience to submit proof of completion of Bachelor’s degree (if necessary).
- 4) CLG analyzes proffered wage for prevailing wage obligation and either submits prevailing wage request to State Employment Security Agency (SESA), or relies upon on-line OES data or an alternative wage source for proof that the employer has met prevailing wage obligations.
- 5) CLG prepares the Labor Condition Application (LCA) and e-mails the LCA to the employer with instructions to post in 2 conspicuous locations for 10 business days.
- 6) Company notifies CLG once the LCA is posted so that CLG can file the LCA electronically, and upon receipt of approved LCA, forwards the certified LCA and the LCA file to Company.
- 7) Company signs one copy of the LCA and returns to CLG.
- 8) Company maintains LCA on site in a public access file with other legally required documentation.
- 9) CLG prepares final documents for review by prospective employee, company, and prospective employee’s spouse and children (if necessary).
- 10) Company and prospective employee review forms for accuracy, sign, and return final documents to CLG.
- 11) CLG conducts final review and prepares packet for filing with the appropriate USCIS Service Center.
- 12) CLG e-mails USCIS receipt to company and prospective employee.
- 13) Once case is approved, CLG sends original approval to company with instructions to forward to the prospective employee and dependents
- 14) If employee is consular processing, employee applies for H-1B visa at U.S. consulate closest to his/her residence.