



H-1B Visa Information for Prospective Employers

This letter will describe the procedures required to obtain an H-1B nonimmigrant visa to allow a foreign worker to engage in temporary employment with your company or organization.

GENERAL INFORMATION

The H-1B visa is used for the temporary employment of a worker in a specialty occupation. It requires application by the U.S. employer for the services of the alien. The basic requirements are that the position demands the services of an individual with at least a baccalaureate level of education in a specific field, and that the employee holds the relevant degree or equivalent experience.

Prior to filing the visa petition with CIS (Citizenship and Immigration Services), it is necessary for the prospective employer to file a labor condition application with the Department of Labor attesting to the payment of the actual or prevailing wages (whichever is higher), that working conditions of U.S. workers will not be adversely affected, and that certain notice requirements have been met. The foreign worker's non-U.S. educational credentials must also be evaluated to obtain a certificate confirming equivalence to a U.S. bachelor's degree.

An H-1B visa may be requested for an initial period of up to three years. The maximum total period of time an alien can hold H status is six years. Yearly extensions beyond 6 years may be possible if a labor certification application or immigrant visa petition has been filed and pending for 1 year. Upon approval of the H-1B petition, notice will be sent by CIS to the designated U.S. Consulate overseas where the employee would present his/her passport for issuance of the H-1B visa. Or, if the employee is presently in the U.S., has not violated his current immigration status or worked without authorization, he is eligible to "change status" to H-1B and does not need to depart the U.S. The H-1B visa is valid only for employment with the petitioning company.

LABOR CONDITION APPLICATION

All U.S. employers that wish to file H-1B petitions and extensions with the CIS must first have a Labor Condition Application (LCA) reviewed and annotated by the Department of Labor (DOL). We will prepare this application for your review and signature, and file it on your behalf. The application form requires that your company agree to several specific statements, which are for the benefit of U.S. workers.

The first is an assurance that the foreign worker will receive the same pay as other similarly employed workers at your company of the prevailing wage in the area, whichever is higher. We may obtain a prevailing wage determination form the state employment commission or a recognized wage survey service for the position in which the employee will be hired, and for the designated geographic area. The employee must be paid an amount no less than 5% below the prevailing wage.

The H-1B non-immigrant must also be offered benefits and eligibility for benefits on the same basis and in accordance with the same criteria as the employer offers to U.S. workers. The company will also affirm that the employment of the foreign worker in the H-1B position will not adversely affect the working conditions of other workers with your company similarly employed in the area of intended employment, and that there is no strike, lockout or work stoppage in the course of a labor dispute in the occupations at your company.

Another requirement is that on or before the date of filing of the LCA application with DOL, two notices will be posted in conspicuous places at the place of employment. These notices must contain specific information including the job title and salary or salary range being offered to the H-1B foreign worker. If there is a bargaining representative for workers in the occupation in which the H-1B worker will be employed, then notification to that representative will be required instead of posting the notices. Within one day of filing of the LCA, supporting documentation must be available for inspection at the place of employment. Any individual or group can request a review of this information.

After we receive the annotated LCA back from the Department of Labor, the H-1B petition and supporting documentation can be filed with CIS. In addition to the LCA requirement, there is another provision which employers should note. An H-1B employer is liable for the reasonable cost of return transportation to the H-1B worker's country of last residence if the alien is dismissed from employment before the end of the period of admission on the H-1B petition. However, if the H-1B worker voluntarily ends his or her employment, the employer is not liable for return transportation expenses. Also, if the H-1B worker stays with the employer for the entire period of the visa petition, the employer has no obligation for return transportation expenses.

The number of H-1B visas available each fiscal year (October 1 to September 30) is only 65,000. This number has proved insufficient and efforts are being made to raise the cap by legislation. While most employers are subject to the cap and can not hire an H-1B worker once the cap is reached until the start of the new year (October 1), in certain situations the employer is considered exempt from the cap. Institutions of higher education and non-profit research organizations are exempt. Also, if the foreign worker has held H-1B status in the past, he may also be exempt.

Processing times for H-1B visa petition can be found on the CIS website at <https://egov.uscis.gov/cris/jsps/ptimes.jsp>.