

# H-1B Visa

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## Summary of the H-1B Visa

- Non-immigrant (temporary) visa
  - Six years (with certain exceptions)
  - Professional or “specialty” occupation requiring a bachelor’s degree
  - Employer specific
  - Location specific
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## Agencies

- U.S. Dept. of Labor approves the Labor Condition Application (LCA)
  - U.S. Citizenship & Immigration Services approves the H-1B petition
  - U.S. Dept. of State issues the H-1B visa
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## New Petition Fees

- Training/Processing fee:
    - 25 or fewer employees - \$750
    - more than 25 employees - \$1,500
  - Anti-Fraud fee - \$500
  - I-129 filing fee – \$460 (old fee \$325)
  - Premium processing (optional)- \$1,225
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## H-1B Cap on Visa Numbers

- 65,000 for bachelor's degree
  - 20,000 additional numbers for those with US master's degree or higher
  - The cap for 2016-2017 fiscal year has been reached for both categories
  - The earliest an employer can file an H-1B petition subject to the cap is April 1<sup>st</sup> each year
  - The start date on a new H-1B is October 1<sup>st</sup>
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## Cap-Exempt Petitions/Employers

- Certain employers and petitions are not subject to the visa cap.
  - Cap Exempt petitions and employers include:
    - Any alien counted against the cap within the 6 years.
    - J-1 who has obtained a waiver through the State program.
    - Institutions of higher education
    - Non-profit entities affiliated with institutions of higher education.
    - Non-profit or governmental research organizations.
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## Cap-Exempt Cont.

- Alien changing H-1B employers, as long as she/he was not working at a cap-exempt institution previously
  - Extensions of H-1B status
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## General Requirements

- An employer must file an H-1B petition on behalf of the alien
  - Self-employment is not allowed
  - Alien could establish a company and that company could sponsor the alien
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## General Req. Cont.

- Definition of Specialty occupation
    - (1) An occupation that requires the theoretical and practical application of a body of specialized knowledge;
    - (2) Attainment of a bachelor's degree or higher (or equivalent) in the specific specialty as a minimum for entry into the occupation in the US.
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## General Req. Cont.

- The alien must have at least a bachelor's degree in the related field or
    - (1) Foreign academic equivalent;
    - (2) Equivalent work experience (3/1 rule); or
    - (3) Combination of both.
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## General Req. Cont.

- Employers must pay the prevailing wage for an H-1B employee
    - The employer must pay at least the prevailing wage or the actual wage, whichever is higher.
    - Wage is determined based on the minimum requirements and the area of intended employment.
    - The Dept. of Labor's website provides four wage levels.
    - A private survey may be obtained.
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## Examples of Specialty Occupations

- Engineer
  - Computer Scientist
  - Physician
  - Professor
  - Accountant
  - Teacher
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## Examples of Non-Specialty Occupations

- Waitress with a Ph.D.
  - General office manager
  - Receptionist
  - Cleaning maid
  - Customer service representative in a nontechnical field
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## Application Process

- Obtaining an H-1B is a two step process
    - The US employer must file an LCA with DOL containing certain representations regarding wages & working conditions to get certification
    - Employer must file an H-1B petition and supporting documentation with USCIS regional center after obtaining a certified LCA from DOL
  - After receiving an approved H-1B petition, aliens who are not in the US must apply for an H-1B visa at a US consulate abroad.
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## Changing Status from F-1 to H-1B

- F-1 students do not need to leave the US to obtain the H-1B status
  - The F-1 student should file for a change of status (I-539) well in advance, since employment pursuant to the H-1B petition cannot commence until the petition is approved and a visa number is available.
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## H-1B Cap-Gap

- Old rule - A gap occurred between the expiration of the F-1 status and the October 1<sup>st</sup> start date for H-1B and students would have to leave the US and re-enter on Oct. 1<sup>st</sup>.
  - Since 2008 there is an automatic extension of stay and work authorization for all F-1 students with pending H-1B petitions until Oct. 1<sup>st</sup>.
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## OPT STEM Extensions

- F-1 students with a degree in science, technology, engineering or math (STEM) who are employed by a company in E-verify can get their OPT extended from 12 to 29 months (this is a 17 month extension)
- Have to be working for US employer in a job directly related to the student's major area of study

## OPT STEM Extension Cont.

- Student must get a Designated School Official (DSO) recommendation to qualify for the STEM extension
- Student must apply before the current post-completion OPT expires
- DSO recommends the extension in SEVIS, issues a new I-20 and student files I-765, employment application and filing fee with USCIS.

## Requirement for Post Extension Approval

- Student must report to the DSO by 10 days of any change to name, resident/address, email address, employer name, employer address or job title/position, supervisor's name, start and end date.
  - Student must report to the DSO every 6 months confirming the information even if there are no changes.
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## Maintaining OPT Status

- F-1 student may not aggregate more than 90 days of unemployment during the first 12 months in OPT
  - F-1 student may not aggregate more than 120 days of employment during the entire 29 months, extended OPT STEM period.
  - Students have a 60 day grace period at the end of the OPT or STEM extension once it expires.
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## Admission & Extension

- H-1B status granted for up to 3 years at a time and for a maximum of 6 yrs.
  - H-1B status can be extended beyond 6 years if the process for legal permanent residency through an employer has reached a certain stage.
  - An alien can start the process for legal permanent residency either before, during or after filing the H-1B petition.
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## Portability

- H-1B change of employer petitions is allowed
  - The employee can commence employment with the new H-1B petitioning employer upon the filing of an H-1B petition
  - An alien can work concurrently for two or more employers pursuant to H-1B petitions.
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## Obtaining U.S. Permanent Resident

- To obtain legal permanent resident through an employment based category is a three step-process:
    - (1) Filing and obtaining an approved LCA from DOL
    - (2) Filing an I-140 immigrant petition.
    - (3) Upon approval of an I-140 petition and if a visa is available, filing I-485 application for adjustment of status to become legal permanent resident.
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## Labor Certification

- Labor certification is the first step in a three step process.
  - Purpose of labor certification is to establish that there are no US workers qualified, willing and able to fill the job
  - A US employer must show a pattern of recruitment before filing an LCA application with DOL
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## Recruitment Requirements

- US employer must place a job order with the State Workforce Agency (SWA) for 30 days
  - US employer must place an advertisement on two different Sundays in a newspaper of general circulation
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## Recruitment Requirements Cont.

- US employer must place an advertisement in additional listings such as a professional magazine or journal, company website, campus placement office, radio or television for at least 2 weeks
  - US employer need to obtain the prevailing wage determination from the SWA
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## Recruitment Requirements Cont.

- US employer must internally post the job/position at the company's facility for at least 30 days
  - Once the requirement is completed and US employer determined there are no US workers who are qualified for the job, US employer then files LCA (Form 9089) with DOL to get it approved before filing the I-140 petition for a foreign worker.
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## Employment Based Category

- There are 5 distinct preference categories of employment based immigrant visas.
    - (1) EB-1 Aliens of extraordinary ability in Science, Arts, Education, Athletics or business, Outstanding Professors or Researchers and Multi-National Executives and Managers.
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## Employment Category Cont.

- (2) EB-2 members of professions holding advanced degrees and aliens of exceptional ability in Business, Science and Arts
  - (3) EB-3, professionals with relevant bachelor's degrees, skilled workers and unskilled workers.
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## Employment Category Cont.

- (4) EB-4, Certain religious workers, ministers, international organization employees.
  - (5) EB-5, persons who invest either \$500,000 or \$1 million.
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## Visa Backlog

- Each month the State Dept. publishes the Visa Bulletin listing the priority dates that are current for each category, which can be found at [http://travel.state.gov/visa/frvi\\_bulletin.html](http://travel.state.gov/visa/frvi_bulletin.html)
  - The only way to project one's priority date is by monitoring the State Dept.'s visa bulletin and inferring from the movement over the last several months.
  - There is currently a 12 year backlog for someone in the EB-3 category who is not from India
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## Other Nonimmigrant Visas

- Treaty Nafta (TN)
    - Must be a citizen of Canada or Mexico
    - Restrictive list of professions
  - E-1 or E-2 treaty trader or investor
    - Treaty with the alien's country
    - Substantial trade or investment
  - L-1 Intra-company Transferee
    - Must have worked for affiliated company abroad for at least 1 year
    - Must be coming to the US to work for affiliated company as executive, manager or specialized knowledge.
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## Other Nonimmigrant Visa Cont.

- O-1 Extraordinary Ability
  - J-1 Exchange Visitor
  - B-1 or B-2 visitor
  - F-1 Student
  - P Entertainer or Athlete
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## Resources

- U.S. Citizenship & Immigration Services  
[www.uscis.gov](http://www.uscis.gov)
  - U.S. Dept. of Labor  
[icert.doleta.gov](http://icert.doleta.gov)
  - U.S. Dept. of State  
[www.travel.state.gov](http://www.travel.state.gov)
  - Foreign Labor Certification Data Center  
[www.flcdcenter.com](http://www.flcdcenter.com)
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