

H-1B Fact Sheet

OVERVIEW

H-1B specialty worker visas are the most common temporary work permits available to professionals. U.S. corporations and other organizations that require foreign professional workers obtain them routinely. A U.S. employer can file an H-1B specialty worker petition with the United States Citizenship and Immigration Services (CIS) on behalf of a foreign employee provided that the job requires at least a bachelor's degree in a particular field. Eligible fields of endeavor include, but are not limited to: most computer science jobs, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and other positions that require a degree of a combination of education and experience in a field related to the job's duties.

The potential H-1B worker must either have a university degree or a combination of education and experience equal to a degree in a field related to the offered job. Three years of progressive experience in an occupational specialty often is deemed equivalent to one year of university studies. H-1B status may be granted for an initial period of up to three years; however, extensions can be obtained for up to a total of six years and sometimes more. An employer can request an H-1B visa for less than three years, and H-1B employment may be part-time.

Employers must offer an H-1B employee the same salary and benefits packages normally offered US workers in similar positions. An H-1B-sponsoring employer is obligated to pay H-1B employees at least the prevailing rate of pay for that position in the area of the work site. Employers are also obligated to keep records to establish they are paying the employee the required wage and are otherwise complying with the terms and conditions of the H-1B program.

IMPORTANT FACTS:

The quota limit for regular H-1B visas is 65,000. However, 20,000 additional visas are reserved for those with a master's degree or higher. The Employer and Employee should understand that because of the limited number of visas available, the application would likely be entered into a "lottery" whereby the Beneficiary's application may or may not be chosen. Furthermore, a foreign national seeking an H-1B visa may have "immigrant intent" in that the maintenance of a foreign residence is not required

BASIC INFORMATION TO BE SUBMITTED TO THE USCIS:

Information Needed from the Employer:

- Date the employer's company or organization was established.
- The employer's IRS employer ID number.
- The total number of employees at the employer's place of business.
- The employer's net and gross annual income, or, if a non-profit organization, the employer's annual budget.

- The specialty worker's job title and a detailed description of the proposed job duties.
- The specialty worker's salary.
- The approximate value per week and a description of the benefits (i.e., health insurance) the specialty worker will receive.
- The name and title of the person who will sign the required forms on behalf of the employer.
- Information about the petitioner and the types of services it provides (i.e., a company brochure or other literature, if available).
- The company must be able to demonstrate the ability to pay the salary offered to the H-1B employee.

Information Needed from the Employee:

- Legible copies of all college, university diplomas or other higher education documents. Copies do **not** need to be certified for authenticity. Copies may be faxed to us initially but hard copies must be sent by mail. Degrees should be sent to us **first** and **immediately** because we must have some foreign degrees evaluated for their U.S. equivalency before an H-1B petition can be filed.
- Copies of transcripts from colleges, universities, or other institutions of higher learning should be sent to us as soon as they are available because sometimes they are necessary and on other occasions they are useful.
- The prospective H-1B worker's *curriculum vitae* or resume.
- Copies of the prospective H-1B worker's current passport, I-94 Arrival/Departure card (if in the U.S.), and any U.S. immigration documents. If the spouse and/or children will accompany this individual in H-4 status, copies of their current passports and I-94 Arrival/Departure cards are also required. Please note that those in H-4 status are **not** permitted to work.
- If already working in the U.S., copies of most recent pay stubs from the current employer to evidence maintenance of status.

APPLICATION PROCESS:

1. Prevailing Wage Determination

The Beneficiary must be paid the required wage. The required wage must be equal to or higher than the prevailing wage listed on the Department of Labor (DOL) website or the wage offered by the employer to other similarly qualified employees at the same location. Therefore, the required wage must be equal to or higher than, but never will be lower than, the prevailing wage.

2. Labor Condition Application

A critical document for an H-1B1 and an H-1B petition is the Labor Condition Application. By submitting an LCA, an employer attests that:

- It will pay the foreign worker the required wage rate;
- The employment of the foreign worker will not adversely affect the working conditions of workers similarly employed in the area of intended employment;
- There is no a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;

- And the employer has provided notice of the filing of the LCA to its employees (via the posting requirement).

3. File H-1B Petition

- Filing fees for *each* petition (subject to change):
 - \$325 for Form I-129
 - \$500 Fraud Prevention and Detection Fee
 - \$750 or \$1500 ACWIA fee (if more than 25 employees, then \$1500) and only required first petition and first extension of status;
 - \$2000 additional fee if company employs more than 50 employees and 50% or more of those hold H-1B or L-1 nonimmigrant status
 - \$290 for Form 539 Application to change status for dependents of H-1B holders
 - \$1,225 for Premium Processing fee (if want USCIS to adjudicate application within 15 calendar days)
- Filing Deadline
 - H-1B Petitions MUST be filed with USCIS ON April 1st of each fiscal year, to ensure a start date of Oct. 1 of that same year.

4. Visa Processing

- After USCIS has issued an approval notice, it will forward the petition for use by DOS in visa processing.
- Each US Embassy and consulate has specific instructions for visa processing

5. Employer Posting Requirements

The Employer must maintain a Public Access File for the corresponding LCA. The basic documents in a Public Access File include:

- Signed copy of the certified LCA;
- Original posting notice for the LCA;
- Acknowledgment of receipt of the LCA by the H-1B1 nonimmigrant;
- Actual wage memorandum with supporting documentation of the wage rate, specifically, the wage rate to be paid for the specialty occupation and the methodology used to set the actual wage;
- Benefits memorandum with supporting documentation; and
- Prevailing wage survey and supporting documentation.

PROCESSING TIMES AND VALIDITY PERIOD:

- LCA: DOL has 7 working days to issue a final determination and/or certification
- H-1B Petition: If Premium Processing, then USCIS will adjudicate application within 15 calendar days. If no Premium Processing, then USCIS is adjudicating petitions between 2-4 months (subject to change).
- Visa Processing: Processing times vary by U.S. embassy or consulate. Visa wait times for interview appointments and processing can be accessed online.

- Maximum amount of time allowable in H-1B status is 6 years, offered in increments of 3 years at a time.

PAYMENT OF FILING/LEGAL FEES:

The Department of Labor takes the position that fees associated with obtaining an H-1B visa are an employer's business expense and should not be borne by the foreign national. Therefore care must be taken if the payment of these fees by the foreign employee may bring his/her pay below the required rate of pay. The employer is required to pay the higher of the actual or the prevailing rate of pay.

PENALTIES FOR NONCOMPLIANCE:

A DOL finding that the employer has violated the LCA requirements, such as through "willful" failure to pay the required wage rate or "substantial" failure to post a notice of the LCA filing, could result in penalties including a monetary fines per violation, payment of back wages, and debarment from filing LCA's or permanent labor certifications, or obtaining approval of H, L, O, and P nonimmigrant or employment-based immigrant petitions for at least one year. Obviously, the care taken in adhering to these requirements will lessen the risk of imposition of any of these penalties.

H1B1 VISA FOR NATIONALS OF CHILE AND SINGAPORE:

The H1B1 category was created by the Free Trade Agreements signed with Chile and Singapore in 2003. There are 6,800 available H1B1 visas each fiscal year for nationals from these countries. These visas are deducted from the 65,000 H1B visas that are available worldwide each year. The requirements for the H1B1 are largely identical to those of the H1B.

Requirements:

- Just as the H1B visa, the position must be in a specialty occupation; that is, a position requiring theoretical and practical application of a body of knowledge. As with the H1B visa, a **labor condition application** (LCA), certified by the U.S. Department of Labor, is required.
- There is no requirement that a petition first be filed with the USCIS. Chileans and Singaporeans may apply directly at a U.S. consulate for an H1B1 visa. A petition may be filed with the USCIS to change status to H1B1, or to extend H1B1 status.
- H1B1 status is generally granted in one-year increments, and may be extended.
- The spouse and minor children of an H1B1 employee are authorized to live in the United States in H-4 status, and to study, but are not permitted to work.
- The period of employment in the U.S. must be temporary. As such, unlike H1B and L visas, H1B1 visas are not considered **dual intent** visas. Therefore, a person in H1B1 status, who files for permanent residence (commonly referred to as a "green card") may endanger his/her continued H1B1 status