

H-1B Frequently Asked Questions

(Revised February 2010)

What is an H-1B?

The H-1B is a nonimmigrant classification used by an employer offering a position in a specialty occupation to an employee who will be temporarily employed (up to 6 years). The employee must also be a professional in a specialty occupation.

What is a specialty occupation?

A specialty occupation requires theoretical and practical application of a body of specialized knowledge, consistent with a profession requiring a minimum of a bachelor's degree or its equivalent. For example, medicine and health, architecture, engineering, mathematics, physical sciences, social sciences, education, certain business specialties, certain computer science specialties, accounting, law, and theology are specialty occupations.

Is there an annual limit on the number of H-1B aliens?

Yes. U.S. immigration law limits the number of new H-1B petitions to 65,000 per federal fiscal year. A few types of employers, including higher education, government and nonprofit research organizations, and some directly affiliated institutions and employees who have previously held H-1B status are exempt from being counted in the number.

How long can a foreign national be in H-1B status?

Employers may request a maximum of 3 years of H-1B status with each petition. Under current law, a foreign national can be in H-1B status for a maximum period of six years at a time. Extensions may be filed up to 6 months before the H-1B validity ends. After that time, a foreign national must remain outside the United States for one year before another H-1B petition can be approved, with only a limited number of exceptions.

Can an H-1B status holder change employers?

An H-1B status holder may change employers. The new employer's position must meet the H-1B requirements and the new employer must file a new H-1B petition before the employee may begin working for the new employer.

For whom may an H-1B employee work?

H-1B employees may only work for the petitioning U.S. employer and only in the H-1B activities described in the petition. The petitioning U.S. employer may place the H-1B worker on the worksite of another employer if all applicable government rules are followed. H-1B employees may work for more than one employer, but must have a separate I-129 petition filed by each employer.

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What if the foreign national's circumstances change?

As long as the employee continues to provide H-1B services for the same U.S. employer that petitioned for the H-1B status, minimal changes in job duties will not affect the foreign employee's status. However, a change in work locations or a significant change in job duties or title may require that the employer's petition be amended. The application to amend the petition must be made **before** the employee starts the new position or at the location. A foreign national may only change employers without affecting his/her status if the new employer files a new I-129 petition for the scholar **before** he or she begins working for the new employer.

Must an H-1B foreign national be working at all times to maintain his/her status?

As long as the employer/employee relationship exists, an H-1B foreign national is still in status. An H-1B foreign national may request vacation, sick, family medical leave, or other leave, or be on strike without affecting his or her status. Since an H-1B employee must be paid the salary shown in the petition, if an H-1B is reduced by the employer from full-time to part-time status, an amended petition must be filed. If an H-1B employee is terminated, his or her status expires, even though the I-94 and petition appear valid beyond that date.

Can an H-1B foreign national travel outside the U.S.?

An H-1B visa allows a foreign national holding that status to reenter the U.S. during the validity period of the H-1B visa and approved petition.

Can an H-1B foreign national intend to immigrate permanently to the U.S.?

An H-1B foreign national can be the beneficiary of an immigrant visa petition, apply for adjustment of status, or take other steps toward lawful permanent resident (LPR) status without affecting H-1B status. During the time that the application for LPR status is pending, an alien may travel on his or her H-1B visa rather than obtaining advance parole or request other advance permission from the USCIS to return to the U.S.

What about spouse or dependents of an H-1B foreign national?

A spouse and dependents may apply for the H-4 classification under the terms of the H-1B status accorded to the foreign national worker. By law, H-4 holders may not hold any type of employment and may not be compensated for any work.

How much does an H-1B petition cost?

The employer must pay various filing and other fees to file an H-1B petition. The basic filing fee for the Form I-129 used for the petition is \$325. Each employer must also pay a \$500 anti-fraud fee for each new H-1B petition. Extensions do not require the anti-fraud fee. Certain employers must also pay a training fee of either \$750 (employers with 25 or fewer employees) or \$1500 (employers with 26 or more employees) for each new H-1B petition. Institutions of higher education are exempt from the training fee.

Depending on the foreign national's individual circumstances and how quickly the employee wants the foreign national to begin working, the employer may choose to pay a premium processing fee of \$1,225 to guarantee processing within 15 calendar days. Paying this fee does not ensure that a petition will be approved.

The basic filing fee for the

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What steps are required to file an H-1B petition?

The employer must first request a prevailing wage determination from the U.S. Department of Labor (DOL). The employer is required to pay the foreign national at least the prevailing wage for the occupation that s/he will hold in the location where the job will be performed. The employer must then file a Labor Condition Application with the DOL, attesting that the employer is paying the higher of the prevailing wage or the actual wage that it pays its other employees in the same occupation; the employer is providing comparable working conditions, including benefits, to its foreign employees as it pays its U.S. workers; and that other conditions have been met. The employer must also create and make available a public inspection file that includes proof of compliance with these attestations. Finally, the employer files a Form I-129 Petition for Nonimmigrant Worker with the U.S. Citizenship and Immigration Service (USCIS) at the appropriate Service Center. The petition must be approved before the employee can change status from another nonimmigrant status to H-1B in the U.S. or apply for an H-1B visa at a U.S. consulate abroad.

Where can I find more information?

USCIS: Form I-129 and its instructions are available without cost at the U.S. Citizenship and Immigration Services website: <http://www.uscis.gov/portal/site/uscis>. This site also includes other information about the H-1B process.

USDOL: Information about the DOL's procedures, how prevailing wages are calculated and determined, and the on-line Form ETA 9035E Labor Condition Attestation, Form ETA 9141 Application for Prevailing Wage Determination, and instructions are available without cost at the U.S. DOL's Employment and Training Administration: <http://www.foreignlaborcert.doleta.gov/>.

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