

H-1B Nonimmigrant Visa Professional or Specialty Occupation

Professional or Specialty Occupation Visa

H-1B nonimmigrant status authorizes employment of a worker in a professional or specialty occupation. Initial H-1B status is usually about 3 years and it can be extended for a total of 6 years. In certain cases, H-1B status can be extended beyond 6 years in one or three-year increments.

H-1B Requirements

The H-1B visa requires **(1)** a professional or specialty occupation position that requires a minimum of a bachelor's degree; **(2)** the employee has that degree or its educational/employment equivalent; **(3)** a salary which meets the prevailing wage determination; and **(4)** a Labor Condition Application (LCA) annotated by the Department of Labor (DOL).

The employer must agree to pay return transportation expenses to the employee's home country if the employee is dismissed before the end of the authorized period of stay. The employer is not responsible for such expenses if the employee voluntarily ends employment or the authorized period of stay expires.

The H- 1B Visa Petition

Prevailing Wage Determination: The Company must pay the beneficiary a salary at least equal to 100% of the wage of similarly situated employees. Our firm obtains a Prevailing Wage Determination from the Bureau of Labor Statistics OES wage site for the beneficiary's position for that geographic area.

Labor Condition Application: The USCIS requires the U.S. employer to file a Labor Condition Application (LCA) with the Department of Labor (DOL). Our firm prepares the LCA for review by the company. We file the LCA with the DOL, which processes the application immediately.

The LCA requires the company to agree to specific terms for the benefit of U.S. workers. First, the company will pay the beneficiary the same salary as other similar employees. Second, the company affirms that the employment of the beneficiary will not adversely affect the working conditions of other similar employees within the company, and that there is no strike, lockout, or work stoppage as part of a labor dispute within the company. Third, prior to filing the LCA, two notices were posted at conspicuous places at the company. The notices contain specific job information including the job title and salary of the position. If there is a bargaining representative for such employees, notice to that representative is required rather than the posted notices.

Within a day of filing the LCA, supporting documents must be available for review at the place of employment. The USCIS and the DOL may review such documents.

H-1B Petition and Supporting Documents. The H-1B petition includes several USCIS forms; a support letter on company letterhead with details of the company, the position and qualifications of the employee; company documentation; and evidence of the qualifications of the employee.

H-1B Employer Filing Fees: All H-1B employers, except those determined “exempt”, need to pay a \$1,500 Education and Training Fee if employing 26 or more “full-time equivalent” employees or \$750 if employing 25 or fewer “full-time equivalent” employees. All H-1B employers are required to pay a \$500 Anti-Fraud Fee for the first H-1B petition.

Premium Processing

The USCIS will make a determination on an H-1B petition in 15 calendar days if an additional \$2,500 filing fee is sent to them for premium processing; otherwise, the petition will be processed through the regular procedures. **NOTE:** Premium processing is not available for cap subject H-1B filings until the USCIS confirms (after the H-1B lottery has been completed) that it is.

Approval of the H-1B

The USCIS issues an I-797 approval notice as evidence of the employee’s H-1B status. H-1B status allows the employee to work for the petitioning company only. The employee’s dependents are issued approval notices as evidence of their H-4 status.

The employee generally must have an H-1B visa stamp in their passport for travel out of and return to the U.S. This process of getting the visa is called visa consular processing. Our firm assists clients and their families in applying for visas at the U.S. Consulates as an additional legal service.

Licensing

Qualifications for positions in the United States vary by industry and by state. Check with your industry and states professional licensing bodies to determine eligibility requirements.

H-1B Professional Visa Document List

Employee (Beneficiary) -photocopies only

- ❑ Current passport (identity pages and all pages with any U.S. visa, stamp or notation)
- ❑ I-94 Card (front and back) or online printouts: <https://i94.cbp.dhs.gov/I94/request.html>
- ❑ Previous USCIS approval notices (H-1B; F-1; I-20; IA DS-2019; EAD card)
- ❑ Detailed résumé
- ❑ Educational documents (diplomas, certificates, transcripts, educational evaluations)
If documents are not in English, exact English translations are required
- ❑ Passports and I-94 cards or printouts of all accompanying family members
- ❑ Recent paystubs (if H-1B extension or transfer)

Employer (Petitioner)

- ❑ Proposed position—Job title, detailed description, salary, education and exp. requirements
- ❑ Annual reports or other information about the U.S. business
- ❑ IRS letter noting company FEIN, Federal or State tax return, or a pre-printed IRS tax coupon
- ❑ Dun and Bradstreet registration at www.dnb.com (for USCIS VIBE program)
- ❑ Payment for filing fees—(1) Petition (2) Training (3) Anti-fraud (when applicable)

Fong•Ilagan, LLP works with clients to simplify the H-1B visa process. Please contact our office at 713.772.2300.