
All About H1B Visas!

Read

all about the H-1B Visa, the important visa for many of our young professionally qualified to work in the United States of America. Colleger Team brings this to you in association with Visaways

Things

Every H1B Dreamer Should Know

Every H1B dreamer should know a few basic facts on US immigration; that is, as a citizen of India, you need a visa to enter the United States. You should also know that a visa doesn't automatically permit entry to the US. If you're lucky to get a visa, this only means that your application has been reviewed by a US consular officer at an American Embassy or Consulate, and that the officer has determined you're eligible to enter the country for a specific purpose.

A visa only allows you to travel to the United States as far as the port of entry (airport or land border crossing) and, after that you ask the immigration officer to allow you to enter the country. Only the immigration officer has the authority to permit you to enter the United States. He or she decides how long you can stay for any particular visit.

There are two categories of US visas: immigrant and nonimmigrant. Immigrant visas are for people who intend to live permanently in the US. Non-immigrant visas are for people with permanent residence outside the US but who wish to be in the US on a temporary basis; for tourism, medical treatment, business, temporary work or study.

Why everyone clamors for the H1B visa?

Primarily because this is the only US visa that enables international professionals to live and work in the USA in a specialty occupation. Another reason why it is much sought after is that though this is non-immigrant visa, being a 'dual intent' visa, H1B also allows you to apply for a Green Card later which will give the applicant a Legal Permanent Residency status in the US.

Read more about H1B in the first part of our series on US Visas:

What Is An H-1B Visa?

The H-1B is a visa issued by American consulates/embassies for people who are trying to enter into USA as a nonimmigrant; this classification is given to someone who, especially, will be employed temporarily in a specialty occupation or as a fashion model of distinguished merit and ability.

(A person, who applies to a US consulate for a visa or files a petition for immigration to U S Citizenship and Immigration Services, is usually known as 'alien'. This term is consistently used throughout this article in the same sense and not in any extraterrestrial context.)

What Is A Specialty Occupation?

A specialty occupation requires theoretical and practical application of a body of specialized knowledge along with at least a bachelor's degree or its equivalent. For example, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts are specialty occupations

How Does One Apply?

H-1B status requires a sponsoring US employer. The employer must file a Labor Condition Application (LCA) with the Department of Labor attesting to several items, including payment of prevailing wages for the position, and the working conditions offered. The employer must then file the certified LCA with a Form I-129 petition plus accompanying fee of \$190. Based on the US Citizenship and Immigration Services (USCIS) petition approval, the alien may apply for the H-1B visa, admission, or a change of nonimmigrant status.

How Long Can An Alien Be In H-1B Status?

Under current law, an alien can be in H-1B status for a maximum period of six years at a time. After that time an alien must remain outside the United States for one year before another H-1B petition can be approved. Certain aliens working on Defense Department projects may remain in H-1B status for 10 years. In addition, certain aliens may obtain an extension of H-1B status beyond the 6-year maximum period, when:

1. 365 days or more have passed since the filing of any application for labor certification, Form ETA 750, that is required or used by the alien to obtain status as an EB immigrant, or

2. 365 days or more have passed since the filing of an EB immigrant petition.

Extensions Beyond Six Years For H1B Visa Holders Who Are Awaiting Green Cards:

H1B non-immigrants will be permitted to apply for one-year extensions beyond the six-year maximum provided that they have either filed an I-140 immigration application or an I-485 adjustment of status application AND that one year or

more has passed since the filing of labor certification or the I-140.

This important development enables H-1B workers who have reached the six year maximum to stay and continue working in the US while waiting for their green cards. Prior to this, such individuals were forced to leave the US if they had not received their green card in time.

Who Can An H-1B Alien Work For?

H-1B aliens may only work for the petitioning US employer and only in the H-1B activities described in the petition. The petitioning US employer may place the H-1B worker on the worksite of another employer if all applicable rules (e.g., Department of Labor rules) are followed. H-1B aliens may work for more than one US employer, but must have a Form I-129 petition approved by each employer.

What If The Alien's Circumstances Change?

As long as the alien continues to provide H-1B services for a US employer, most changes will not mean that an alien is out of status. An alien may change H-1B employers without affecting status, but the new H-1B employer must file a new Form I-129 petition for the alien before he or she begins working for the new employer. The merger or sale of an H-1B employer's business will not affect the alien's status in many instances. However, if the change means that the alien is working in a capacity other than the specialty occupation for which they petitioned, it is a status violation.

Must An H-1B Alien Be Working At All Times?

As long as the employer/employee relationship exists, an H-1B alien is still in status. An H-1B alien may work in full or part-time employment and remain in status. An H-1B alien may also be on vacation, sick/maternity/paternity leave, on strike, or otherwise inactive without affecting his or her status.

Can An H-1B Alien Travel Outside The US?

Yes. An H-1B visa allows an alien holding that status to reenter the US during the validity Period Of The Visa And Approved Petition.

Can An H-1b Alien Intend To Immigrate Permanently To The US?

Yes. An H-1B alien can be the beneficiary of an immigrant visa petition, apply for adjustment of status, or take other steps toward Lawful Permanent Resident status without affecting H-1B status. This is known as 'dual intent' and has been

recognized in the immigration law since passage of the Immigration Act of 1990. 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 requesting other advance permission from Immigration to return to the US.

How Many H1B Visas Are Available Each Year?

65,000 for the fiscal year starting October 1, 2005. 95,000 for the fiscal year starting October 1, 2006. In addition, 20,000 numbers are available for aliens who received Masters or higher degree from the US.

What Happens When The Annual Quota Is Reached?

The USCIS

announces a cutoff date once the annual quota is reached. Petitions filed before the cutoff date, but after the quota has been used up, will be held for processing the following October. Petitions submitted after the cutoff date will be returned to the petitioner without consideration.

What Are The Government Fees Involved In Obtaining An H1B Visa, And Who Pays Them?

The USCIS

filing fee is currently US\$ 190, which must be paid by the sponsoring employer. In addition to the filing fee, the USCIS imposes a Fraud Prevention and Detection fee of US\$ 500. For H1B applications, the USCIS also imposes an American Competitiveness and Workforce Improvement Act (ACWIA) fee of US\$ 1,500 if the petitioner employs more than 25 full-time equivalent employees, including any affiliate or subsidiary, or US\$ 750 if the petitioner employs 25 or less full-time equivalent employees. Finally, consular visa processing usually involves a charge of approximately \$150 in local currency. Prevailing Wage Determinations and Labor Condition Applications are free of government charges.

The H1B

applications that are approved for each fiscal year receive an employment start date of October 1 (the first day of the fiscal year).

Required Documentation for H1B visa holder

High School

Diploma (only required if no college level of education has been attained.)

College

diplomas (Associate, Bachelor, Master, Ph. D)

College

transcripts/academic records

Certificate/diploma
of training courses in IT

Evidence of
license or professional membership in IT

Employment
verification in the form of retrospective references (these must correlate with
information in CV/Resume)

Current
CV/Resume describing in detail employment history including: name & address
of employer, job title, and month/year commenced employment & month/year
concluded employment, type of business, duties performed, full/part time.

Identity page
in passport plus any pages evidencing current or expired US Visas

Documents To Get H-4 VISA -For The Dependant Of H-1B
VISA Holder

Passport of
dependant.

Principal
applicant's passport copies all pages.

H1B approval
notice - Copy

Letter from the
current employer

Marriage
certificate in original (If spouse)

20 Marriage
pictures (If spouse)

Child birth
certificate in original.

I-94 card

When you arrive
in the US, an arrival/departure record card is issued and placed in your
passport next to your visa. This is called an I-94 card that permits a foreigner
to be in the US (as opposed to visa that provides the right to travel in and out

of the US in a certain status, e.g. H1B visa status).

The US

immigration official at the US port of entry will review the foreigner's immigration documents (e.g. H1B visa) and stamp the I-94 card with an expiry date consistent with the visa expiry. It should be noted that the immigration official has the power to limit a foreigner's stay irrespective of the visa expiration. The I-94 card is removed when a foreigner departs the US

Are You Eligible For H1B Visa?

An H1B visa applicant must have ONE of the following:

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Bachelor's degree or higher degree (or foreign equivalent) in the specialty field. Minimum of 12+4 years education.

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A license to practice in the chosen occupation (if such a license is required to practice), or

.
Those who do not have 16 years of education, 3 years of experience in the specialty field will be considered as one year education.

With regards to the required work experience, it must be clearly shown that it:

.
was in the specific occupational field or a very closely related occupation

.
was progressive (i.e. moved from junior to senior responsibilities)

.
required theoretical and practical application of specialized knowledge required by the occupation

.
Was gained while working with colleagues who also attained a degree or its equivalence in the specialty occupation.

H1B Visa Workflow (Assuming that you had found an employer)

1. Employer

files a petition on your behalf. An employer can be an individual, partnership or corporation. Applications are "job specific." If your situation changes (for example, you lose your job or change locations), your new employer must file a new H1B visa petition. The visa is only valid for work with the employer that filed the original petition. The BCIS require employment letters with details such as, specific information addressing the positions held, the exact duties of the position, the exact dates of employment, and information regarding the supervisors and co-workers of the beneficiary.

2. The 'Prevailing

Wage' and actual wage must be determined and compared. The employer is required to pay the higher of the two. The prevailing wage is determined by the State Employment Security Agency by completing a special form, which asks the employer for the responsibilities, skills and experience needed for the job. The actual wage is determined by comparing other workers in the same positions with the same level of experience.

3. Employer

files the Labor Certification Application (LCA) which is a two-page form that contains information about the employer. By completing and signing the form, the employer is agreeing to pay the higher of the two wages, that the employment of this individual will not adversely affect the conditions of other workers and that there is no strike for their occupation at the workplace. Recently, Congress determined that employers must attest that they will offer H1B visa holders the same benefits as their other workers. This includes health, life, medical, retirement, stock options and bonuses.

4. When the LCA

is approved, the Department of Labor (DOL) will return a certified copy to the employer.

5. The employer

must post notices at two conspicuous places at their business of the H1B visa filing for 10 days or provide notice of the filing to the collective bargaining representative for their employees. The LCA form can be used for the actual posting as well. After the Department of Labor accepts the LCA, then your employer can file your H1B visa petition in Form I-12.

6. The employer

files H1B Petition with appropriate BCIS Service office. The filing must include the required forms, fees, documents and information; form I-129, education & experience evaluation & documents, training certificates, professional memberships, resume, employment agreement and letter of support.

7. The employer

then has to wait for the petition to be processed. Processing times vary depending upon service center and the visa. It could be up to a three- to four-month wait. The H-1 can be applied via premium processing by paying additional USD 1,000 to obtain the petition sooner.

8.

The petitioner - prospective employer- is sent a receipt by the BCIS

Service Centre which bears a 9 digit reference number pertaining only to that particular case, H-1B processing times and general information about the petitioner and foreign worker. This is the petitioner's first confirmation that the petition is in the adjudicating queue.

9. A notice is generated by the prospective employer and mailed to the consultant notifying him/her of this receipt and outlining information on processing times etc. The notice should warn the consultant not to resign from current employment, sell accommodation or make any major life changes until it is communicated that the H1B visa petition has been approved.

10. Normally, a case will be approved within or on the designated time frame outlined in the BCIS receipt. An approval notice (Form I-797) is issued to the petitioner. The Form I-797 shows dates of validity for the foreign worker to work in H1B status for the petitioner.

The H1B visa beneficiary then applies for personal and family visas at the Consulate. Normally, people apply to the Consulate that is closest to where they live. Visa processing normally takes 2-3 days, depending on the Consulate. Once the passports are returned with valid H1B visa stamp, the Consultant and his/her family may enter the US in non-immigrant status. The worker's family may also be permitted to live in the US during the period that the H1B visa is in effect, but cannot be a paid employee while on an H4 visa.

During the term of the H1B visa the employee can also apply for permanent residency. This is called "Dual Intent", and is a privilege some other US visas do not enjoy.

(Do you have any queries on Visas? Do write to us and we shall be posting the answers here!)

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