

H1B Visas

The H1B visa is a non-immigrant visa. It is designed to allow U.S. employers to recruit & employ foreign professionals in specialty occupations within the USA for a specified period of time. The H1B program provides the opportunity for foreign workers in specialty occupations to legally live and work in the US for a total of 6 consecutive years, and entitles their spouse and children (under the age of 21) to accompany them and legally live in the USA on an H-4 visa. However, the spouse and children have to obtain their own work visa for working. Under H1B visa requirements, the company, organization or the employer is the petitioner, it has to file H1B petition for hiring the employee, while the foreign worker is the beneficiary. Foreign individuals themselves cannot apply for an H-1B visa to allow themselves to work in the US. The number of H-1B visas issued each year is subject to an annual cap (known as H1B cap) that is determined by the US Congress.

Foreign workers must possess at least a bachelor's degree or its equivalent (this requirement can usually be met by having a 3-year degree and 3 years of relevant post-graduate experience). Occupations that qualify for H-1B visas typically require highly specialized knowledge in a field of human endeavor including, but not limited to: IT, Architecture, Engineering, Mathematics, Physical Scientific Research, Social Science, Biotechnology, HealthCare/Medicine, Education, Law, Accounting, Business, Theology, Arts, Computing, Finance, Accounting, Banking, Marketing, Sales, Recruiting, and Telecommunication.

Aside from the requirement that the position be a specialty occupation, the employer must first file a Labor Condition Application (LCA), Form ETA 9035 or Form ETA 9035E, with the Department of Labor (DOL). An employer filed LCA attests that the H1B visa worker is being paid the prevailing wage for the work being performed, and that employment of the foreign worker will not adversely affect the working conditions of similarly employed U.S. workers. The initial H-1B visa may be issued for up to three years. It may then be extended in the first instance for up to two years, and later on for one year, for a maximum of 6 consecutive years. In some cases, the H-1B visa can be extended beyond the 6 year limit. Please refer to our article "H-1B Extension beyond the 6 Year Limit." The H1B visa can also "recapture" time spent abroad while in H-1B status. If an alien opts to "recapture" time abroad, then periods of time spent not in the US will NOT count against the 6 year limit of the H1B visa.

H1B Visa for Working as well as Green Card

One of the privileges of the H-1B visa, as opposed to many other nonimmigrant visas, is that it is a 'dual intent' visa. In other words, under the terms of the H1B visa, the alien employee can also apply for a Green Card and become a permanent resident, and the H-1B visa will not be denied or invalidated. If an employer is willing, the employer can sponsor a foreign employee in H1b status for a green card application. The H-1B status has the advantage of applying for permanent citizenship as well. This visa is advantageous for any highly specialized employees who are willing

to work in the US. Significantly, once an employer has brought a foreign worker to the U.S. on the basis of an H-1B visa, if the company should dismiss that worker before the expiration of the visa, the company is responsible for any ticket costs that the worker incurs travelling back to his/her place of last foreign residence. This provision is dependent upon dismissal and is not relevant if a worker chooses to resign. If a foreign worker in H1B status resigns or is dismissed from the sponsoring employer, the worker must either apply for and be granted a change of status to another non-immigrant status; find another employer (subject to application for change of visa); or leave the United States.

The H-1B nonimmigrant category is a temporary work visa classification. The H1B petition is filed with the USCIS Service Center with jurisdiction over the work site (either the California or Vermont Service Center). There are two types of procedures for H-1B applications. 1) Under **Regular Processing**. Depends on the case and location, it normally takes the USCIS about 90-120 days to adjudicate the H-1B petition; 2) Under **Premium Processing**, the USCIS will adjudicate the application within 15 days from the receipt of the application if you pay a \$1,225 premium processing fee.

Generally, the H1B petitioner is required to pay the following fees to USCIS for an H-1B petition.

Filing Fee:

The petitioning employer is not obligated to pay the USCIS filing fee of \$325 for H1B applications. The beneficiary or employer may pay the filing fee.

Fraud Prevent & Detection Fee:

Starting from March 8, 2005, the petitioning employer is obligated to pay a Fraud Prevention and Detection Fee of \$500 if it seeks a new H1b visa for beneficiary or seeks to change a beneficiary's employer.

Premium Processing Fee:

If premium processing is chosen, whoever (either the petitioner or beneficiary) wants to request for premium processing shall pay the \$1,225 fee for the premium process request.

Employer Sponsorship Fee:

The petitioning employer is obligated to pay \$1500 (with more than 25 full-time employees) or \$750 (with no more than 25 full-time employees) as an employer sponsorship fee required under the American Competitiveness and Workforce Improvement Act of 1998. In some circumstances, the above Employer Sponsorship Fee of \$750 or \$1,500 may be exempted, when:

- The employer is an institution of higher education; or
- The employer is a nonprofit organization or entity related to, or affiliated with an institution of higher education; or
- The employer is a nonprofit research organization or governmental research organization that is primarily engaged in basic research and/or applied research; or
- The employer is a primary or secondary education institute; or
- The employer is a nonprofit entity which engages in an established curriculum-related clinical training program or has students register at the institution; or
- The petition is the second or subsequent request for an extension of stay filed by the same employer.

Public Law 111 – 230 Fee:

Under the Public Law 111-230 signed by President Obama on Aug 13, 2010, the petitioning employer is obligated to pay \$2,000 if the employer has more than 50 employees and more than 50% of employees that are on H1B or L1 Visa status.