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H-1B Nonimmigrant Visa Professional or Specialty Occupation

Professional or Specialty Occupation Visa

H-1B status authorizes employment of a worker in a professional or specialty occupation. The status can be extended for a total of 6 years and, in certain cases, beyond 6 years in one-year increments.

H-1B Requirements

The H-1B visa requires (1) a professional or specialty occupation position that requires a minimum of a bachelors 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 CIS 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 CIS 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
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\$750 if employing less than 26 “full-time equivalent” employee. All H-1B employers are required to pay a \$500 Anti-Fraud Fee for the first H-1B.

Premium Processing Fee

The CIS will make a determination on an H-1B petition in 15 calendar days if an additional \$1,225 filing fee is sent to them; otherwise, the petition will be processed through the regular procedures, 2-5 months approximately.

Approval of the H-1B

The CIS issues an 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.

Unless a Canadian citizen, the employee must have an H-1B visa stamp in the employee’s passport for travel out of and return to the U.S. This process of getting the visa is referred to as visa consular processing. Our firm assists clients and their families in applying for their visas at the U.S. Consulates as an additional legal service. Please contact our office for detailed information.

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 Nonimmigrant 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)
- ❑ Previous CIS approval notices (H-1B; F-1; All I-20’s; Employment Authorization Card)
- ❑ Detailed Resume and Recent 3 Months’ Paystubs (if in F-1 OPT status)
- ❑ Educational documents (Diplomas, certificates, transcripts, educational evaluations)
If documents are not in English, exact English translations are required
- ❑ Passports and I-94 Cards of all accompanying family members

Employer (Petitioner)

- ❑ Proposed Position including job title, detailed job description, salary, and education and experience requirements (H-1B questionnaire responses)
- ❑ Most recent Tax Return, Annual Reports or Financial Statement for the business
- ❑ State Articles of Incorporation & Certificate of Filing
- ❑ The IRS letter assigning the company’s FEIN, Federal or State tax return, or a pre-printed IRS tax coupon
- ❑ Detailed Description of the Company History & Service or Products provided
- ❑ The following *optional* items if made available:
 - Sample Customer Contracts, Invoices, or Purchase Orders
 - 3 Month Bank Statements
 - Current Commercial Lease
 - Sample Marketing Pamphlets, Advertisements, or Brochures