
An H-1B temporary worker is defined as a person who will perform services in a specialty occupation defined by the U.S. Department of Homeland Security as **one which requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires the completion of a specific course of education culminating in a baccalaureate degree or higher in a specific occupational specialty [I.N.A. 214(i)(1)]**. The H-1B petition is employer and employment specific.

To be classified as an individual of exceptional ability in the sciences, arts, or business, the international must possess a degree of expertise significantly above that ordinarily encountered. The application must include documentation of at least three of the following: 1) academic records in the area of exceptional ability; 2) letters from current or former employers showing that the person has at least ten years of full-time experience in the occupation; 3) a license³ to practice the profession or certification for the occupation, if required; 4) evidence that the person has commanded a high salary; 5) membership in professional associations; or, 6) recognition for achievements and significant contributions to the industry or field by peers or organizations.

Note: The H-1B exceptional visa is a subjective decision made by the Department of Homeland Security. Consequently, Departments and visitors must understand the importance of substantiating everything on the curriculum vitae so that the case may receive a favorable consideration.

The Immigration Act of 1990 and the Fiscal Year 2005 Omnibus Appropriations Bill dramatically affected the H-1B visa. It is very important that you read the following directions closely and not sign anything unless you are in total agreement. Any misrepresentation of facts or employer's failure to comply may result in serious fines and/or penalties.

In order to ensure compliance, the Office of International Affairs (OIA) has been designated as the only representatives to file H-1B petitions on behalf of the institution. Private legal counsel **may not** file these applications on behalf of the institution.

Departments or visitors seeking H-1B exceptional ability sponsorship are encouraged to consult with the Office of International Affairs as early as possible. A general process flowchart, documentary checklist and other instructional forms are also provided through the **OIA web page**.

Eligibility

There are **four preliminary steps** that must be taken before OIA may file the H-1B Visa Petition with the U.S. Department of Homeland Security (DHS), U.S. Citizenship & Immigration Services (USCIS):

1) Determine if the international medical graduate legally qualifies for the exceptional ability H-1B non-immigrant visa in accordance with U.S. immigration regulations.

It is important to note that non-immigrants who are currently or have been in the United States on the J-1 Exchange Visitor Visa may be subject to the two year home residency requirement and ineligible for the H-1B status unless a waiver of the two year home residency requirement has been granted or the individual has fulfilled this requirement. To determine H-1B eligibility, departments must obtain copies of immigration documents that reflect a complete history of visitor's entries and stay within the U.S.

2) Obtain appropriate administrative approval from the sponsoring department to support the H-1B Exceptional Ability Visa Petition.

3) **Obtain clearance from the UTH Office of Legal Affairs regarding release of controlled technology or technical data** to foreign persons in the United States, upon their review of Export Control Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) and determination of whether a license is required from either the U.S. Department of Commerce and/or U.S. Department of State.

4) **Apply for and obtain a Prevailing Wage Determination from the Office of Foreign Labor Certification (OFLC) National Prevailing Wage and Helpdesk Center (NPWNC) of the U.S. Department of Labor in Washington, D.C.**

The University of Texas Health Science Center at Houston must pay 100% of the employee's salary to be considered *the employer*. The employer is required to pay the H-1B worker and all peers the prevailing wage or actual wage, whichever is higher. Therefore, the salary required to move to the next step and request a Foreign Labor Certification must be equal or larger than the prevailing wage obtained as determined by the NPWHC. The Office of International Affairs will notify the hiring department if the salary being offered is below the salary required to process the LCA. If the salary offered is below the salary required to process the LCA, the department will be required to seek administrative approval to upgrade the salary and provide a copy of the approval to the Office of International Affairs. Once the salary has been confirmed, the Office of International Affairs will be able to submit a Labor Certification Application (LCA).

5) **Apply for and obtain approval in the form of a Labor Certification from the U.S. Department of Labor.**

Once the prevailing wage, actual wage, and administrative approval have been received, OIA will process the LCA through the Department of Labor and will post two copies of the LCA. The posting requirement of 10 business days will identify to all employees of the institution that the employer will be filing an H-1B visa petition for a prospective employee with the title and salary identified on the LCA. The visual posting will not identify the international visitor.

Application Process



Instructions for completing the H-1B packet:

The **H-1B Petition Documents Checklist** may be used as a cover to indicate list of documents attached to OIA upon submission of the visa sponsorship packet.

Hiring departments are welcome to prepare a **draft** H-1B visa request packet for the Office of International Affairs to review and prepare an Advisory prior to requesting Dean's approval of the H-1B petition.

To facilitate advisory issuance, it is strongly recommended that you submit all documents included in the checklist.

1) Memorandum of Support:

Have the Chairman of the Department prepare a memorandum seeking institutional support from the appropriate Vice President or Dean. The memorandum must contain the following information:

- a) Identify the individual you want to support, indicating if this is an initial, modification, extension, transfer, or concurrent H-1B petition request, and state the visitor's qualifications that satisfy the requirement of "exceptional ability." Also, indicate the hours and base rate of pay offered – list how many hours per week and the annual salary. If the applicant is on a part-time basis list the hours per week along with the hourly rate.
- b) State the job title and description; salary; and, period of appointment;
- c) State that all H-1B non-immigrants will be paid at least the actual wage level paid to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher. If there are no employees, so state;
- d) State that the Department will pay the reasonable cost of return transportation for the visitor if the visitor is dismissed from employment before the end of the period authorized admission;
- e) State that the Department will provide accurate information for reviewing deemed exports license requirements and ensure continuous compliance with U.S. Export Control regulations regarding the Release of Controlled Technology or Technical data to Foreign Persons in the United States; and,
- f) State that the terms of the approved labor condition application will be fully complied with.
- g) On the last page of your correspondence, type: () Approved () Disapproved

By: _____

Date: _____

2) Application for Prevailing Wage Determination – ETA Form 9141 - U.S. Department of Labor:

- Fill out the Prevailing Wage Determination ETA Form 9141 – **SECTION D** on **pages 1, 2 and 3 only**:
 - Part a: Job Description
 - Part b: Minimum Job Requirements
 - Part c: Place of Employment Information
- Page 1 Sections A, B, & C will be completed by OIA and page 4 will be completed by DOL, Office of Foreign Labor Certification (OFLC) National Prevailing Wage Helpdesk Center (NPWHC) in Washington, D.C.
- For a full explanation of the questions that make up Application for Prevailing Wage Determination refer to the **ETA Form 9141 – General Instructions** in the OIA web page.

3) Actual Wage Form:

- a) Employees - list all employees in your department who hold the same job title as the one to be accorded to the H-1B **exceptional ability** applicant. Use additional sheets as needed.
 - i. Education - Indicate each employee's degree or educational equivalency;
 - ii. Experience – indicate each employee's years of experience accrued since the degree awarded [see III (a). (1)]; and,
 - iii. Salary - indicate the current salary of each employee listed.
 - b) Exclusions - Draw a single line through any person listed that you do not consider to be a peer of the H-1B exceptional ability applicant. State specific reasons why they should not be considered as peers. Reasons should relate to:
 - i. Experience - length, type, relevancy, specialized knowledge.
 - ii. Education – degree(s), class rank, GPA.
 - iii. Job responsibilities – major differences in the job duties performed such as major tasks, supervisory responsibilities.
 - iv. Other legitimate business factors – professional distinctions, awards, publications, documented meritorious performance.
 - c) Identify the highest salary of the employees whose names have not been eliminated. This will be the actual wage. As previously stated to support the H-1B **exceptional ability** applicant either the prevailing wage or the actual wage, whichever is the higher, must be paid to the H-1B **exceptional ability** applicant and all peers.
 - d) Have the preparer, Chairman of the Department, and appropriate Vice President or Dean sign the actual wage form
- **By signing the actual wage form, the Department Chair understands that the exclusions must be defensible in a court of law, and should we be challenged on any of the exclusions, it would be the Department Chair's responsibility to defend the exclusions. Consequently, Departmental personnel records must be properly documented.**

4) US Export Controls Verification Form

Have the designated administrative officer complete the US Export Controls Verification form. This form must be signed by the appropriate Principal Investigator and Department Chairman.

5) International Visitor's Credentials and/or Immigration documents:

- a) Evidence the visitor has the required degree by submitting either:
 - i. A copy of the person's U.S. baccalaureate or higher degree which is required by the specialty occupation; or
 - ii. A copy of the foreign degree and evidence it is equivalent to the U.S. degree. (Generally established through a credential evaluation); or
 - iii. Education, specialized training, or progressively responsible experience that is equivalent to the U.S. degree required by the job.

- b) Evidence of any required license or other official permission to practice the occupation in the state of Texas (e.g., an institutional permit);
- c) A copy of any written contract between the employer and the international visitor, or a summary of the terms of the oral agreement under which the visitor will be employed (if applicable);
- d) A copy of the visitor's curriculum vitae; and,
- e) Copies of all immigration documents that reflect a complete history of visitor's entries and stay within the U.S.
- f) The H-1B exceptional ability application must include documentation of at least three of the following:
 - i. Academic records in the area of exceptional ability; or
 - ii. Letters from current or former employers showing that the person has at least ten years of full-time experience in the occupation; or
 - iii. A license to practice the profession or certification for the occupation, if required; or
 - iv. Evidence that the person has commanded a high salary; or
 - v. Membership in a professional association; or
 - vi. Recognition for achievements and significant contributions to the industry or field by peers or organizations.

5) Employer fees:

- a) All H-1B petitions (initial, extensions, modifications, or transfers) are subject to a **\$325.00** application fee. The \$325.00 fee **must** be an institutional check payable to USCIS. **No personal checks will be accepted.**
- b) All H-1B (filed as initial for someone outside the U.S.; transfer for a new employee who is currently on an H-1B with another employer; or, as a change of status for someone with the institution but on a different visa status) petitions are subject to the Fraud Prevention and Detection Fee of **\$500.00**. **This fee must be paid by the institution seeking to sponsor an initial H-1B non-immigrant classification or seeking to change a beneficiary's employer. The fee is not applicable to petitions filed as modifications or extensions by the existing H-1B employer. Institutions of Higher Education ARE NOT exempt from the \$500 fee. The \$500 fee MUST be an institutional check payable to USCIS – No personal checks will be accepted.**
- c) Premium Processing fee **\$1225.00 (optional)** - Departments may wish to pay this fee in order to expedite H-1B applications **once they are received by USCIS**. USCIS regular processing is taking between 120 and 180 days to process. Premium Processing shortens the response time (e.g. approval, denial, or request for further evidence) to 30 days.
- d) Institutional checks sent to OIA for H-1B applications (as indicated above) **must** identify the name of the individual for which the check is to be used. Failure to have this noted on the check will result in delays of processing the application.

It is the responsibility of the hiring/hosting department to ensure appropriate institutional approval and clearance for processing the offer or appointment required in connection with the individual in reference PRIOR to submitting final visa request to OIA. This includes but is not limited to Human Resources (i.e. for salary guidance and job requirements), Benefits, Payroll, etc., as relevant.

Forward the Chairman's memorandum, prevailing wage form, actual wage form, and attachments to the appropriate administrative office. Instruct the appropriate office to send the memorandum and all supporting documents to the Office of International Affairs when the approval or disapproval is given. The approval triggers the submission of the Prevailing Wage to the appropriate agency. Upon receipt of the of the prevailing wage survey, if there are no salary discrepancies, the Labor Condition Application (LCA) will be submitted to the Department of Labor. At this point the first official contact with the visitor will be made. After the Department of Labor approves the LCA and the international visitor's application information and filing fee have been received, the Office of International Affairs will submit the H-1B visa petition to the U.S. Citizenship & Immigration Service.

OIA will notify the department and visitor when the H-1B visa petition is submitted to USCIS. Any correspondence received by OIA from USCIS regarding the H-1B petition (e.g. I-797 Receipt Notice, I-797 Approval Notice, Request for Additional Evidence) will be shared with the department and visitor if and when received.

The USCIS recommends that the employer file the petition as soon as possible, but no earlier than six months before the visitor is expected to begin the appointment. Because the International Office has no control over petition processing, departments are urged to allow eight months from the time they begin seeking institutional support to complete the process.



The International Office will notify the department and the visitor when USCIS approves the H-1B petition. **If the visitor will be entering the U.S. from abroad, it is important to note that entry into the U.S. cannot be made any earlier than 10 days prior to the begin date on the approval notice.** It is important that the department and the visitor understand the visitor's employment is contingent upon always having the appropriate working visa. Also, the institution is liable to begin paying wages no later than 30 days after the H-1B nonimmigrant first enters the U.S. in H-1B status, or no later than 60 days after a change of status becomes effective, if the nonimmigrant changed status in the U.S.

The Office of International Affairs stands ready to assist you and the visitor in complying with the procedures outlined above. If you have any questions needing immediate attention, please do not hesitate to contact the Office of International Affairs at (713) 500-3176. The Office of International Affairs is located in the University Center Tower, 7000 Fannin, Suite 130. The office hours are Monday – Friday from 8:00 a.m. to 5:00 p.m.