

H1B Visa Guide: Everything You Need to Know About the H1B Visa

The H1B Visa is a great option for foreign nationals seeking to work in the United States with a valid job offer. In this guide I will discuss what you need to know the H1B visa.

If you have any questions about the H1B visa, feel free to email me directly at Info@immigrationlawfirmltd.com. I'm very responsive via email and would be happy to answer your questions.

Introduction

The H1B is a special visa that allows foreign nationals to enter the United States to perform “specialty occupations.” A specialty occupation is one that requires, at minimum, a bachelor’s degree or enough work experience that could equate a degree.

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1. What is the H1B Visa?

The H1B is a special visa that allows foreign nationals to perform specialty occupations in the United States. This work can be in - but is not limited to - any of the following fields:

- architecture, engineering, mathematics, physical sciences, social sciences, medicine, health, education, business, law, accounting, theology, and the arts.

If an argument exists that the position requires a bachelor's degree, then you may be eligible for an H1B. The work can be either full-time or part-time. Every year, there are 65,000 H1B visas made available. An additional 20,000 H1Bs exist for those with advanced degrees (masters, juris doctor, etc.) from US institutions.

H1B visas are valid for up to three years. Furthermore, three-year extensions are available, for a total validity period of six years. Those on an H1B are eligible to bring their dependent spouse and children. These dependents would hold H4 status.

H1B visa holders are eligible to change employers. But they must meet certain requirements. H1B beneficiaries may also pursue permanent immigration status. This is because it is a dual intent visa.

2. What are the benefits of the H1B visa?

There are many benefits to having an H1B visa. Here are just a few:

You can legally work in the United States.

The H1B allows foreign nationals to perform specialty occupations in the United States. This allows highly qualified individuals to work and live in the US. This benefits both the beneficiaries and the US economy.

You can simultaneously pursue permanent resident status.

The H1B is a non-immigrant visa. However, unlike the B, H2B, H3 and J1 visas, you only need to show "temporary entry." As opposed to showing non-immigrant intent. You must prove you will depart following the termination of H1B status. Although, you are not required to maintain a residence abroad. This means that while you are in H1B status, you can apply for benefits that could lead to a green card - without harming your visa.

Your dependents can come to the US with you.

Your spouse and dependent children (who are under 21 and unmarried) are eligible for H4 status. This means they can come to the United States with you. Those with H4 status may attend school, but are ineligible to work (subject to certain exceptions). Additionally, those with H4 status must be in the United States to join the principal worker. H4 status will be revoked if the visa holders are in the US while the principal H1B holder is usually absent abroad.

H1B visas have portability.

One big advantage of H1B visa is the portability benefits. This means that if you are on an H1B and change employers, you can begin working for a different employer upon filing your new petition.

3. What are the requirements for the H1B visa?

There are many conditions to meet for an H1B visa. An immigration lawyer can help you determine if you meet these provisions. Our office can also help you organize evidence to prove eligibility. Please be aware that those working on an H1B could be subject to random site checks. This is to ensure the information provided to the US government was correct.

You must have a job offer from a US company.

The employer must extend a bona fide job offer to the beneficiary. This can be through a written contract or, if there is no written contract, through a summary of an oral agreement. Additionally, there must be evidence to support the need for the beneficiary.

There must be a valid employer-employee relationship.

This is an important and mandatory condition. For valid employer-employee relationship, there must be employer control. Control is the ability of the petitioner to determine when, where, and how the beneficiary completes his/her duties. USCIS will deny a petition if the beneficiary will not be an employee or report to the petitioner.

USCIS will examine the following factors to determine if there is a valid employer-employee relationship:

- if the petitioner supplies tools or other instruments to the beneficiary,
- if the petitioner can hire, pay, and fire the beneficiary,
- if the petitioner evaluates the beneficiary's work,
- if the petitioner provides any employee benefits to the beneficiary,
- and if the beneficiary appears on the petitioner's tax information.

It is difficult to support an employer-employee relationship when the beneficiary is off-site. Yet, a valid relationship can exist if the petitioner controls the beneficiary's work schedule and has regular contact. A contract or other document detailing the terms and conditions of the job may show an employee-employer relationship.

There must not be any labor disputes at the workplace.

USCIS will deny the petition if there is a strike or other labor dispute at the beneficiary's worksite. Although, if the petition has already been approved, the process will be suspended, and you will be unable to come to the US.

The job must be considered a specialty occupation position.

A specialty occupation requires theoretical or practical knowledge of a field. To learn whether your job qualifies as a specialty occupation, you should reference:

- The Department of Labor's Occupational Outlook Handbook (OOH),
- The Department of Labor's O*NET online system,
- and/or the Department of Labor's Dictionary of Occupational Titles.

The emphasis is not on the job title, but on the job duties of the individual applicant. Here, the job description will be carefully analyzed. This includes the specific tasks, demands, duties, and actual requirements of the position.

Other factors to determine if the job is a specialty position would be:

- the beneficiary's education and work experience,
- the nature of the petitioner's business,
- the industry standards,
- salary (both of the beneficiary and the industry standard),
- and the business size.

Additional factors could be:

- work from previous employees in the same position
- and the job listings for the same or similar positions in the past.

Positions with the same title can result in different adjudications from USCIS. This is because of USCIS' focus on the job description and duties.

The job must require a bachelor's or higher degree (or equivalent).

The job must require a bachelor's degree (or higher) in a specific field of study related to the occupation. Not all foreign degrees titled "bachelor's degree" are equivalent to a US institution's bachelor's degree.

USCIS may require a credentials evaluation of your foreign transcript and degree. This can help provide evidence that you meet the H1B bachelor's requirement. The most popular credentials evaluator is the American Association of Collegiate Registrars and Admissions Officers Electronic Database for Global Education (AACRAO EDGE). It may be useful to highlight the relevant coursework in your transcript and tie it to the petitioner support letter.

EXCEPTIONS:

If you do not have the academic requirements standard for the job, you can still qualify for an H1B. This can be done through a combination of education, training, and work experience. Here, a petitioner would need to demonstrate the previous experience is equivalent to the standard degree.

Your previous work must include the theoretical and practical application of specialized knowledge. Evidence to support this can include:

- recognition from leaders in your field,
- published material by or about you,
- evidence of licensure,
- evidence of significant contribution to the field,
- results from CLEP or PONSI,
- and/or membership in a professional association.

The required experience depends on the degree traditionally used for the position. If the required degree for the position is a doctoral degree, you must have a doctorate. For example, if a master's or advanced degree is traditionally used - then a bachelor's degree with five years of experience in relevant positions may be considered equivalent. If a bachelor's degree is required, three years of relevant work experience may count for one year of education.

You must have paid all outstanding fees.

For an H1B petition, the employer must pay all relevant fees. Provide the reasoning in your cover letter if a designated fee is not required.

You must have licensure (if required by federal, state, or local law).

If the position requires a license: the beneficiary must be licensed prior to the H1B approval. If not, provide evidence demonstrating a technical problem for the delay. Note that restricted licenses are only valid for one year or until the license expires, whichever is longer. An approval cannot exceed the validity period of a temporary license.

There are only two exceptions to this rule:

- If a permanent license is not required by the state
- If the state allows unlicensed people to practice under the supervision of a licensed supervisor

Those in healthcare professions should be aware that state guidelines supersede OOH requirements. Those primarily involved in research or teaching (not patient care) do not need a license. Additionally, some other exceptions may exist for those in healthcare professions.

Note that having a license does not equate a specialty occupation. For example, nursing requires a license and is not considered a specialty occupation. Additionally, not all specialty occupations require a license. You will not be discriminated against for not having a license if it is not required for your position.

4. H1B Visa Numerical Limitations

One thing you should be aware of is the numerical limitation on H1B visas. Every year, 65,000 H1Bs are made available, with an additional 20,000 visas reserved for those with advanced degrees.

Any petition not chosen in the lottery or registered after the final receipt date will be rejected. Furthermore, any petition missing mandatory documents and/or fees will be rejected as well. This means that it is critical to be on top of your H1B visa application process. An immigration lawyer can help ensure that you maximize your likelihood for success.

Due to the lottery, many qualified applicants may never be reviewed. Reform has been pushed to change this process. Some advocates believe H1Bs should be reserved for the highest-paid or the most-skilled beneficiaries. Yet, this has not been implemented and the lottery system is our current process.

Today, we have a special lottery system for the advanced degree petitions, held before the regular lottery. If a beneficiary with an advanced degree is not chosen in the first lottery (20,000 designated spots), a second chance will be given in the general lottery.

It is important to note that H1B1 visa holders (discussed below) are not counted toward the H1B visa cap. The H1B1 has its own numerical limitations: 1,400 for Chilean citizens and 5,400 for citizens of Singapore. Furthermore, H4 dependents are not count towards this quota.

Finally, it is important to note that there are some exceptions. Employees for the listed organizations are not counted toward the cap on H1B visas. These organizations are also not subject to the ACWIA fee:

- Institutions of higher education, or nonprofits related to higher education; and
- Nonprofit or governmental research organizations.

5. Who files the petition?

A US company will file the petition on behalf of a foreign national who will receive the H1B. The US company is called the petitioner. The foreign national is called the beneficiary.

A petitioner must:

- Have extended a job offer to the beneficiary;
- Have a valid employer-employee relationship with the beneficiary; and
- Have an Internal Revenue Service Tax identification number.

Petitioners can only file one petition per beneficiary in any given calendar year. If a petitioner submits more than one application, the petition or visa will be denied or revoked. The only exception to this is if the petitioner receives notice of a delay on the first filing. In this case, the petitioner can send a second petition with an explanation and withdraw the first.

However, multiple companies in the same corporate family can submit a petition for the same beneficiary. Here, each entity must have their own Federal Employer Identification Number. Additionally, they must have their own legitimate need to hire that beneficiary.

It may also be possible to have an agent file an H1B petition. This person acts on behalf of the petitioner. An agent can file on behalf of multiple employers if the beneficiary will work with more than one entity. Note that if an agent files the petition, all requirements must still be met.

An [immigration lawyer](#), including myself or a member of my team, would be happy to assist with your H1B filing.

6. H1B Visa Process

The H1-B visa is a multi-step process. The following is a general guideline followed by a more detailed explanation:

- Apply for H1B Registration period;
- If selected in lottery, submit an H1B application;
- Receive approval;
- If abroad, submit a visa application; and
- Begin work in the United States.

Registration Period: Effective 2020

In winter 2019, DHS implemented the H1B CAP electronic registration rule. This applies to all employers applying for an H1B petition on behalf of any potential future H1B employees. Note that this registration rule also includes the advanced degree applicants.

For all H1B cap-subject petitions, a separate registration application is required. This must be done for each potential worker. If the electronic registration application is selected, petitioners can then submit Form I-129. Previously, petitioners had to be submit the I-129 every year, even without knowing whether their petition was chosen.

DHS will require a payment of \$10 for each electronic registration, which is due and payable at the time of the registration submission. A registration will not be considered submitted unless the fee is rendered.

[Submit an H1B Petition](#)

Remember, you should submit two copies of your H1B petition. You must mail your application to the appropriate USCIS Service Center. One should be the original and the second, a copy, for consular processing. The appropriate USCIS delivery address will vary. Please go on USCIS.GOV and check the filing location based on your employment details. An immigration lawyer can assist you in determining where your petition should be mailed.

As discussed in Section 4: "Numerical Limitations," it is crucial you submit your petition no later than April 1st. Please note that the petition is considered received when it arrives at the Service Center. All petitions received on the same day will be treated equally. If you are chosen, keep in mind the requirements for keeping your status and filing your renewal. H1B extensions cannot be filed more than six months before the status expiration date. Thus, it is recommended that you begin preparing as early as possible.

To file for your H1B visa, here are some of the documents that you may need:

- Form I-907: This document is only required if you pay the additional premium processing fee. This guarantees you will receive a response within 15 calendar days, absent any RFEs.
- Form I-129 with Supplement H: This form provides information about the US company, the beneficiary, and the job. The information provided here helps the officer determine if the H1B conditions are satisfied.
- Exhibit packet:
 - 1. if requesting change of status, evidence of the beneficiary's lawful status,
 - 2. always include a copy of the biographic page of the passport(s) of the beneficiary and any dependents,

3. an approved labor condition application,
4. a support statement from the US company,
5. a cover letter from your attorney, and
6. any other supporting documentation that may help your case.

Receive an approval

When your petition is approved, you will receive an approval notice via Form I-797.

If USCIS is satisfied with the submitted petition, it will be processed for approval. If the government is unable to deliberate an approval, they can send a Request for Evidence (RFE). This states what terms of the H1B application was unmet and why USCIS is unable to render an approval. Here, the petitioner can provide additional evidence to help support their filing.

USCIS may also send a Notice of Intent to Revoke or Deny (NOIR/NOID), which must be responded to within the given deadline. Failure to respond to either document or failure to provide adequate evidence in the response will mean the petition is rejected.

However, if the new evidence allows USCIS to determine all conditions for an H1B visa are satisfied, a Form I-797 with approval of an H1B petition, will be rendered. Approved H1B petitions are valid for up to three years or through the validity period of the H1B petition, whichever is shorter. Please be aware that an H1B petition can be revoked if any of the facts listed in the petition substantially change or were fraudulently stated.

Submit a visa application

Upon receiving the approval, the foreign national can schedule an appointment at a US consulate. Note that you cannot apply for a visa more

than 90 days before the start date of the job. Upon scheduling a consular interview, the foreign national will meet with a US consular officer and show them their I-797 approval.

Since the conditions for a H1B visa were determined to have been met with the approval of the petition, the focus of the interview would be on the individual's eligibility. The beneficiary should bring a copy of the petition and evidence of his/her specific qualifications. Different consulates and individual situations require different forms. Additionally, please be aware that visas do not have to be issued for the full length of the petition's validity. You will need to check the visa reciprocity schedule with the Dept. of State to see how long your visa stamp will be valid for.

Begin work in the United States

H-1B beneficiaries may arrive in the United States up to 10 days before the start date of their petition and stay up to 60 days (with some exceptions) after the termination of their H1B status. Upon arrival, you should present your passport, H1B visa, and Form I-797 approval. You should ensure you receive an I-94 card with accurate information. You should take care to note expiration dates for your status.

7. H1B Visa Documents

Many documents are required during the H1B visa application process. The following is a general list. Please be aware this is not a comprehensive list and the documents you will need will vary based on your individual case:

- A detailed job description
- A copy of the foreign national's resume
- Transcripts or certifications, accompanied with credentials evaluation (if applicable)

- Copies of training certificates, with an outline of the curriculum
- Support letters from previous employers (if applicable)
- Basic company information
- Biographic page(s) of passport(s) for applicant and any dependents
- A DOL job description
- Statements from professional associations (if applicable)
- Job postings for similar positions
- Written contract or summary of oral agreement
- Federal tax returns
- Business plan
- Evidence the degree required is required for all people in that position
- Evidence of licensure (if applicable)

8. H1B Visa Fees

The following fees are paid for by the US employer or their representative. Yet, there may be other costs associated with the H1B visa application process. These include translations, photocopying fees, or transportation, which can be paid by the beneficiary. Please be aware that all fees listed in this guide are subject to change.

- ACWIA Fee: \$1,500 for employers with 26 or more employees and \$750 for employers with 25 or fewer employees
- Fraud Prevention and Detection Fee: \$500
- For petitioners with 50+ employees and with 50% or more of their employees holding H-1B, L-1A, or L-1B status (if applicable): \$4,000

- Form I-129 Fee: \$460
- Premium Processing Fee (Form I-907): \$1,440 (fee can be paid by beneficiary)

9. H1B Visa Processing Time

The amount of time it takes between an H1B filing and the receipt of an approval, depends on a wide range of factors. These factors include:

- whether premium processing was elected,
- which type of H1B visa you are requesting (cap-exempt, advanced degree, regular),
- which USCIS Service Center you use,
- and which US consulate you are being stamped at (if you are abroad).

Thus, the processing can take anywhere from less than two months to more than nine months.

Additionally, regardless of approval date, beneficiaries will not be eligible to work until the October 1st following the lottery.

10. Amending an H1B Visa

Once a beneficiary begins working in the United States on an H1B, there are still several things you should note. If the beneficiary changes employers or 50% of their job duties, an amended or new petition must be filed.

If there is a change in worksite, a new labor condition application must also be submitted. If the job ends unexpectedly, the beneficiary may stay for up to 60 days or until the visa expires, whichever is shorter. During this time, the beneficiary may attempt to find a new employer to remain in the US but may not work. It is important to note if there are any changes to a beneficiary's job position or to the US company. Here, an immigration lawyer can help you determine what steps are required to be in compliance with the H1B visa program.

Additionally, an H1B is valid for a maximum of three years. To stay for up to three additional years, an extension must be filed. The request must be submitted while the beneficiary is still in valid H1B status. The extension does not have to be granted and does not have to be for the full three years. To strengthen the application, submit documentation showing the continued need for the H1B beneficiary. Items including, but not limited to, copies of pay records, work schedules, evaluations, and work produced by the beneficiary can be helpful.

11. Recapturing Time

As stated, H1Bs are valid for a period of up to six years. Yet, you should note that time spent in L status counts toward this six-year time period. However, this six year maximum only counts for time physically spent in the United States. If a beneficiary can demonstrate that they spent time outside the United States, that time does not count toward the six-year H1B maximum. This time can be "recaptured" and used towards further extending their H1B time.

For example, if someone returned to their home country for one week each year for a total of six weeks, this time can be recaptured. Here, the beneficiary would be eligible to spend an additional six weeks in the United States on H1B status. Please note that only full days spent outside of the United States can be recaptured. If any part of the day was spent in the United States such as a travel day, it is not eligible for recapture.

12. H1B Visa to Green Card

While on an H1B, you can apply for permanent resident status. Furthermore, those awaiting an immigrant visa priority date may be eligible to stay in the United States on an H1B for longer than six years. You may also be eligible to hold H1B status for longer if you have an approved EB-1, EB-2, and/or EB-3 petition. If you have any questions about the process of going from an H1B visa to permanent resident status in the United States, an immigration lawyer, such as myself or another member of my team, can provide further information.

13. H1B Visa Exceptions

Citizens of Chile and Singapore are eligible for H1B1 status. H1B1 visas are valid for up to 18 months and can be renewed indefinitely. You can apply either through USCIS or at a US consulate abroad. Those under H1B1 status are not counted toward the 65,000 visa cap and are not subject to the same six year maximum stay as those on the H1B. Some jobs that are not considered specialty occupations and are ineligible for an H1B visa may be accepted under the H1B1 visa. If you believe you may be eligible for an H1B1 visa, an immigration lawyer, like myself or another member of my team, can assist you further.

Applicants for an H1B1 visa can apply directly at the consulate or with USCIS (as a change of status). H1B1 applicants can provide all documentation directly to a consular officer when they seek visa stamping. They need not have an approval before their consular appointment.

14. F1 Visa to H1B Visa

Our clients commonly change status from an F-1 (student) visa to an H1B. If you have F-1 status, you are eligible for one year of practical training following your education. Those in STEM fields may be able to extend their practical training for an additional 24 months. This practical training must focus on the theoretical application of your specialized field of knowledge. This work must be related to the degree you earned. Employers can file H1B visas for students engaging in practical training who they wish to hire for a longer period of time and who meet all of the requirements outlined herein.

Some foreign nationals who finished practical training, but cannot commence their H1B employment, may be eligible to stay in the United States during this gap. The H1B holder does not have to return to their home country during this period. Although they may not work in the United States during this time. This "cap-gap relief" eliminates the need for inconvenient and expensive travel between the US and another country. If you have any questions about this process, an immigration lawyer, such as myself or another member of my team, would be happy to assist you.

15. Conclusion

The H1B visa is one of the most popular avenues that allow foreign nationals to perform specialty occupations in the United States. You should now have a much stronger understanding of the various aspects of the H1B visa, including the H1B visa benefits, requirements, and the visa application process.

If you have any questions regarding the information discussed in this guide or about the H1B visa generally, feel free to email me directly at Info@immigrationlawfirmltd.com. I am very responsive via email and I would be happy to help you.

