

H-1B OVERVIEW [8CFR.214.2(h)]



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General Information

The H-1B category is designed for the temporary employment in a ***“specialty occupation”***. A specialty occupation is defined as one that requires a ***“theoretical and practical application of a body of highly specialized knowledge”*** along with at least a bachelor’s degree or its foreign equivalent in the field required for the position. The H-1B employee must be able to meet this requirement and possess a minimum of a bachelor degree in that field. In some cases a combination of education, specialized training and experience can be used to fulfill this condition. In addition, the employer must meet the prevailing wage required by the Department of Labor and pay the higher of: the prevailing wage or the actual wage. The “actual wage” is defined as the average salary for employees with the same title and similar educational background employed in the same institution.

Once these conditions are met, the OISS can proceed with applying for H-1B status/visa to U.S. CIS Service Center. The process consists of the following steps:

- a) Determining a prevailing wage for the position
- b) Securing a certified Labor Condition Application (LCA – Form ETA9035)
- c) Filing I-129 form with supporting documentation with the U.S. CIS Service Center in California or Vermont.
- d) Upon approval of the petition, the employee may apply for an H-1B visa at the U.S. Consulate abroad. This step may, or may not be required depending whether the person is in or outside the U.S.

Department’s Role

Before the department decides to proceed with the H-1B petition, we highly recommend to send or e-mail OISS a brief description of the position, salary and experience requirements to see if it would meet a prevailing wage. Once the prevailing wage is confirmed, the department and the employee should submit to OISS the following documentation:

1. Employer documentation listed on the Department’s checklist: ***Request Form, Wage Determination form, LCA Announcement, Employment Letter, Oral Agreement.***
2. Please refer to the [Department Checklist](#) for information on fees.
3. Employee Information sheet and supporting documents listed on the employee checklist

At the time of sending this documentation to OISS, the department should also post LCA Announcement form. This form must be posted for 10 days in two places where “similarly employed workers” may congregate and the information on the announcement must be the same as that given in the oral agreement and on the wage determination form. A copy of the announcement should be included in the packet sent to OISS.

OISS' Role

OISS provides general advice on H-1B requirements and procedures, reviews submitted documentation, secures prevailing wage, Labor Condition Application and prepares I-129 petition to be filed with the U.S. CIS Service Center. It can take us up to 2 weeks to prepare an H-1B petition from the time we receive a complete application, including fees from the department. Please see the paragraph below for processing times for U.S. CIS.

OISS also maintains a public inspection file on each H-1B worker required by the Department of Labor. With questions related to H-1B process please contact Susan Bender bender@unr.edu or Elizabeth Adamska adamska@unr.edu.

Special Considerations:

1. **Processing time** at the California or Vermont Service Centers for regular petition vary from approximately 2 to 4 months. A premium processing petition is usually approved within 2 weeks. We recommend a premium processing option for employees whose contract is to begin shortly and whose current status precludes them from working at UNR at this point of time. We also recommend it in situations when the employee, or his/her family members plan to travel outside the U.S. in a near future. Prospective employees in H-1B status currently working for another employer, or those applying for extension of H-1 status may not need premium processing. Please feel free to contact us with questions about the best processing option.
2. **Duration:** the maximum length of employment requested at one time is 3 years. It can be extended for up to 6 years total. In certain limited situations it is possible to extend H-1 B status beyond 6 years if a permanent residency application has been filed and is pending for over one year.
3. **Family members**, who are residing with the prospective H-1B worker in the U.S., will be filing for a change of status to H-4. The dependents should complete Form I-539, submit copies of immigration documents listed on the checklist and a check for \$300.00. These items should be submitted along with the H-1B petition. H-4 dependents cannot work in the U.S.
4. **Change in terms of employment** such as: different appointment and responsibilities, significant change in salary level, new employment location **require in most cases** filing a new H-1B petition. If you know the department is considering such changes, please call us ahead of time to discuss the situation and its implications. It is very important that conditions of employment contained in the personnel file for H-1B worker match those in his/her immigration file.
5. **Termination of employment** by the employer prior to expiration date listed on the petition (contract) ends the worker's legal status in the U.S. In such case the employer is responsible for providing the cost of return transportation to his/her home country. If the H-1 B worker is the one who decides to end employment, the university is NOT responsible for the cost of return transportation.