



U.S. Citizenship
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Services

The H-1B Visa Program



A General Overview

November 19, 2021

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H-1B Classification



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- Specialty occupation workers;
- Department of Defense (DOD) cooperative research and development project or co-production project workers; and
- Fashion models of distinguished merit and ability

Specialty Occupation - General Eligibility Criteria



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- Petitioner is a U.S. employer or U.S. agent;
- Position qualifies as a specialty occupation; and
- Beneficiary is qualified to perform the specialty occupation position, including, if applicable, under any state licensure requirements

Statutory Requirements—INA 101(a)(15)(H)(i)(B); INA 214(i)(1)



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An H-1B nonimmigrant must be coming to the United States to perform temporary services in a specialty occupation

- Theoretical and practical application of a body of highly specialized knowledge and
- Attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States

Regulatory Requirements—8 CFR 214.2(h)(4)(iii)(A)



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- A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- The employer normally requires a degree or its equivalent for the position;
or
- The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree

Annual Cap



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- The annual H-1B cap is set at 65,000
- 20,000 H-1B petitions filed on behalf of beneficiaries with a U.S. Master's or higher degree are exempt from the annual cap
- Petitions by, or for employment at, certain organizations are not counted against the cap (e.g., institutions of higher education and related/affiliated non-profit entities)
- Certain exemptions and exceptions that apply to the beneficiary might also render the petition cap-exempt

Process Overview 1 of 2



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- Petitioner (cap-exempt or with a selected registration) files a Labor Condition Application (LCA) with Department of Labor (DOL) for certification
- Once DOL certifies the LCA, the petitioner submits Form I-129 with a certified LCA to a USCIS Service Center
- If USCIS approves the petition for a beneficiary who is outside the United States and requires a visa to enter the United States, the beneficiary will need to schedule a visa interview with the Department of State (DOS) at a U.S. Embassy or Consulate abroad
 - If issued an H-1B visa, the beneficiary may apply for admission to the United States with Customs and Border Protection (CBP)

Process Overview 2 of 2



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- If the beneficiary does not require a visa to enter the United States, he/she may apply for admission into the United States with CBP using the USCIS approval notice. Thus, if visa exempt, the beneficiary can obtain H-1B admission without prior contact or interaction with DOS
- If the beneficiary is in the United States, the petitioner may include a request to change the beneficiary's nonimmigrant status to H-1B or extend the H-1B beneficiary's stay on the Form I-129

H-1B Electronic Registration System



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Jan. 31, 2019, final rule published by DHS in the Federal Register:

- Amended regulations governing H-1B cap-subject petitions, including those that may be eligible for the advanced degree exemption
- Introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions
- Reverses the order by which USCIS selects H-1B registrations or petitions under the H-1B regular cap and the advanced degree exemption. The post-rule selection order requires that the regular cap selection occur first, then the advanced degree exemption selection
- The electronic registration system was successfully deployed for the first time for the FY2021 cap season and is currently being utilized for the FY2022 cap season

Filing Fees



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Currently, H-1B Filing Fees are:

- Base Filing Fee - \$460
- ACWIA Fee - based on number of U.S. employees
 - \$750: 25 employees or less
 - \$1,500: 26 or more employees
- Fraud Fee - \$500
- PL 114-113 (CAA) Fee - \$4,000
- Premium Processing Fee - \$2,500 (optional)

H-1B Status- General Information



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- Dual intent permitted
- Maximum stay of 6 years, with limited exceptions
 - Recapture/Remainder of time
 - AC21: 8 CFR 214.2(h)(13)(iii)(D) and (E)
- Status granted for up to three years at a time
- H-4 nonimmigrant status available to eligible dependents (spouses and children under age 21)
 - H-4 spouses of certain H-1B nonimmigrants may also be eligible for employment

Change of Status



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Section 248 of the INA permits eligible beneficiaries to avoid the delay and expense of departing the United States and returning

- Form I-129 generally must be filed before status expires and must maintain status up to start date on Form I-129
- Beneficiary must have a valid passport
- May not begin working until Form I-129 and COS request (two separate decisions on Form I-129) are approved

Extension of Stay



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- Employers seeking the services of an H-1B nonimmigrant beyond the period previously granted must file a petition extension and may include an extension of stay (EOS) request on Form I-129
- The EOS request may be for:
 - Continuation of same employment
 - Change of employer or amended petition

Extension of Stay - Continued



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Beneficiary must meet all requirements to be eligible for EOS, however the determination to grant or deny the EOS request is at the discretion of USCIS:

- Must be admissible to the United States
- Must be physically present in the United States at the time Form I-129 is filed
- Must have a valid passport
- Form I-129 generally must be filed prior to the expiration of H-1B status
- Must be maintaining valid H-1B nonimmigrant status

Portability



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Portability allows eligible H-1B nonimmigrants already in the United States to begin new or concurrent employment. To be eligible, the petitioner must establish:

- H-1B nonimmigrant has been lawfully admitted in, or otherwise provided H-1B status
- Non-frivolous H-1B petition (Form I-129) timely filed, requesting to amend or extend H-1B status
- Beneficiary has not been employed without authorization from the time of last admission through the filing of Form I-129

Want to Know More?



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For more information about the H-1B program, visit:

- [H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models | USCIS](#)
- [H-1B Electronic Registration Process | USCIS](#)
- [Change My Employment-Based Nonimmigrant Status | USCIS](#)
- [Extend My Authorized Period of Stay as an Employment-Based Nonimmigrant | USCIS](#)