

H-1B INFORMATION SHEET TEMPORARY WORKER

General Provisions

The Immigration Act of 1990 revised the definition and filing procedures for H-1B Temporary Worker. Under the new law, H-1B status is designated for aliens employed in “specialty occupations,” which require highly specialized knowledge and a bachelor’s degree or its equivalent.

Labor Condition Application

The most significant change in the law is a labor condition application (LCA) requirement. Before employers can file an H-1B petition with the United States Citizenship and Immigration Service (USCIS), they must first obtain an approval LCA from the Department of Labor (DOL).

Return Transportation Expenses

Employers who prematurely dismiss an H-1B alien must pay the “reasonable costs” of the alien’s return transportation abroad. The employer must pay the alien’s way back to his/her place of residence outside the U.S., not just to Canada or Mexico. If the alien terminates his/her employment, he/she is not considered to be dismissed and therefore the employer is not responsible for return transportation costs.

Validity Periods

H-1B status is valid for a maximum of six years. An initial report for H-1B status may not exceed three years. However, if the employment terminates prior to the H-1B expiration date, the H-1B status is no longer valid. If the new employment is offered, an amended H-1B petition must be submitted to the USCIS. Consult ISSS immediately if employment is terminated prior to the H-1B validity dates. PLEASE NOTE: Individuals in H status are not allotted a grace period after the termination of employment.

When to file

The labor condition application process takes approximately 5 working days to complete. This portion of the process must be completed before filing the H-1B petition. Petitions for H-1B status may be filed no sooner than 6 months before the intended beginning effective date of employment. This process is very long and requires much documentation from both the department and applicant. It is recommended that departments begin any new H1B application, extensions, or amendments as close to 6 months in advance of the intended start date. This will avoid any usual delays. The processing time for approval may take as long as three to four months. Please keep this in mind.

FILING INSTRUCTIONS

Temporary Services in Specialty Occupation

A specialty occupation is one which requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires completion of a specific course of education culminating in a baccalaureate degree in the specific occupational specialty.

Required Documentation

- 1) an approved labor condition application from the Department of Labor
- 2) completed Form I-129 (prepared by ISSS)
- 3) evidence the alien has the required degree by submitting either:
 - a) a copy of the person's U.S. baccalaureate or higher degree which is required by the specialty occupation,
 - b) a copy of a foreign degree, translation, and evidence it is equivalent to the U.S. degree, or
 - c) education and experience that is equivalent to the required U.S. degree; go to Global Credential Evaluators, Inc. web page at <http://www.gcevaluators.com/services.htm> to download application forms for credentials evaluation. Process a document evaluation for "Document by Document Evaluation" for the fee of \$75.00;
- 4) a copy of any required license or other official permission to practice the occupation in the state of intended employment;
- 5) letter from the department/division head containing the following information:
 - a) state purpose of the letter request H-1B status for temporary employment
 - b) provide background information on USM; describe the proposed employment, including duties to be performed, minimum requirements for filling the position, title and salary, exact dates of employment (beginning and ending dates)
 - c) describe the applicants qualifications for filling the position
 - d) include a statement that the employer will pay the reasonable cost of return transportation if the alien is dismissed before the end of the period of authorized employment, and
 - e) a statement that the employer will fully comply with the terms of the approved labor condition application
- 6) a copy of any written contract between the employer and the alien or a summary of the terms of the oral agreement under which the alien will be employed;

HIRING AN EMPLOYEE WHO IS CURRENTLY IN H-1B STATUS WITH ANOTHER EMPLOYER

If you are interested in hiring an H-1B applicant that is currently in the U.S. in H-1B status with another employer, it is possible for the applicant to begin working for the Southern Miss before the I-797, H-1B approval notice is received from the USCIS. According to the guidelines established by the U.S. Immigration and Naturalization Act as amended by the American Competitiveness for 21st Century Act of 2000 [AC21 § 105], [INA § 214 (a) (m)], non-immigrants currently in H-1B status with one employer (other than Southern Miss) can begin employment with a new employer as soon as the new employer files the I-129, H-1B petition for new H-1B employment. The new employer and H-1B applicant do not have to wait for the new petition to be approved in order to begin employment. ISSS will authorize employment to begin as soon as the I-129 receipt notice arrives from the USCIS.

Unlike an extension of H-1B, hiring an applicant who is currently in H-1B status with another employer is treated as NEW employment. Therefore, both the filing fee of \$320.00 and the anti-fraud fee of \$500.00 are both required to be paid.

EXTENDING H-1B STATUS FOR A CURRENT EMPLOYEE OF SOUTHERN MISS

According to 8 C.F.R. § 274.12 (b) (20), if the H-1B applicant is currently in H-1B status with Southern Miss, it is possible for the applicant to continue working for Southern Miss for up to 240 days after the expiration of the current H-1B status as long as the H-1B status was timely filed. Timely filing means that the USCIS must receive the I-129, H-1B application prior to the expiration of the current H-1B. The ISSS Office will authorize employment to continue as soon as the I-129 receipt notice (the official notice of application receipt from the USCIS) arrives before the expiration of the current H-1B.

PLEASE NOTE: If the application for the H-1B extension is not filed before the expiration of the current H-1B status, employment must stop until the I-797 approval notice is received by the ISSS Office.

Filing Fee

Filing fees are payable to the United States Citizenship and Immigration Services (USCIS).

Individual is outside of the U.S.

Form I-129	\$320.00 USCIS Application Fee
	\$500.00 Fraud prevention fee for initial H petition

Individual inside the U.S. and applying for a change of nonimmigrant status:

Form I-129	\$320.00 USCIS Application Fee
	\$500.00 for fraud prevention fee for all initial/transfer H petitions
Form I-539	\$300.00 for dependent(s) no additional charge for more than one
Form I-907	\$1,000.00 (premium processing option, guarantees 15 day response from DHS)

LABOR CONDITION APPLICATION PROCESS

An employer seeking to employ an alien in a specialty occupation on an H-1B visa is required to file a labor condition application (LCA) with the Department of Labor (DOL) before the Immigration Service may approve an H-1B petition. The LCA Form ETA 9035 must be filed with the regional office of the Employment Training Administration having jurisdiction over the state in which the position is located. The employer is required to attest that:

- 1) it will pay H-1B non-immigrants no less than the greater of the prevailing wage or actual wage for the occupation;
- 2) it will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed;
- 3) there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and
- 4) it has publicly notified the bargaining representative of its employees in the occupational classification at the place of employment of its intent to employ an H-1B nonimmigrant, or, if

there is no bargaining representative, that it has posted such notice at the place of employment.

Required Documentation

A copy of each labor condition application and accompanying documents must be made available for public examination at the employer's place of business or place of employment. The employer is required to develop and maintain supporting documentation regarding the actual wages, the prevailing wage, and the required notice to employees. This information must be maintained for a period of one year beyond the end of the period of employment specified on the labor condition application. Payroll records must be maintained for three years from the date of the record.

- 1) Documentation which provides the wage rate to be paid the H-1B nonimmigrant and a description of the system that the employer used to set the "actual wage,"
- 2) A copy of the documentation the employer used to establish the "prevailing wage" for the occupation - e.g. a copy of the State Employment Service Agency (SESA) wage determination; and
- 3) A copy of the posting notice.

Penalties

The Department of Labor's review of a labor condition application is limited to determining whether it is complete or contains no obvious inaccuracies. An investigation of an employer will only occur if a complaint is received from an aggrieved party about an employer's failure to meet a specific condition or misrepresentation of a material fact in the application.

If a complaint is filed and the employer fails to meet the applicable standard regarding wages, working conditions, notification of bargaining representatives or employees, or misrepresentation of a material fact in the application, it may result in the following administrative remedies:

- 1) civil money penalties not to exceed \$1,000.00 per violation;
- 2) employers being barred from filing applications or attestations for a least one year; or
- 3) employers being ordered to provide payment of back wages.

PREVAILING WAGE DETERMINATION FOR H-1B PETITIONS

Please provide the following information about the job to be performed by _____ . **List minimum duty requirements for filling the position.**

Please do not tailor the duties to meet this person's background. You should provide the general description as listed in Human Resources or advertised otherwise.

Department:

Primary Appointment:

Human Resource Official Position Title:

Human Resource Position Code:

Job title as listed on personnel papers:

Minimum duties to be performed:

Minimum educational requirements:

Degree:

Major field of study:

Training (refers only to formalized training resulting in a certificate or diploma, e.g., postdoctoral research, medical residency, and does not include on-the-job training):

Experience (state specific number of months/years required, and indicate type of experience required):

Number of employees supervised:

In answering the questions below, please indicate the minimum requirements for the position. Do not base your answers on the individual's level of knowledge.

FACTORS

LEVELS

- | | |
|--------------------|--|
| 1. Knowledge: | <input type="checkbox"/> Basic understanding of occupation
<input type="checkbox"/> Advanced skills and diversified knowledge |
| 2. Complexity: | <input type="checkbox"/> Requires worker to perform routine or moderately complex tasks
<input type="checkbox"/> Requires judgment and independent evaluation |
| 3. Supervision: | <input type="checkbox"/> Worker receives specific instructions
<input type="checkbox"/> Worker receives only technical guidance |
| 4. Review of Work: | <input type="checkbox"/> Work is closely monitored & reviewed for accuracy
<input type="checkbox"/> Work is reviewed for sound judgment and effectiveness |

Salary:

PLEASE TURN OVER AND COMPLETE OTHER SIDE

Desired dates of employment from _____ to _____ (Not to exceed 3 years)

Department Dean Signature: _____

Box: _____

Phone: _____

Email: _____

Date: _____

Department Chair Signature: _____

Box: _____

Phone: _____

Email: _____

Date: _____

Department Contact Person for questions pertaining to this H-1B application:

Name: _____

Phone: _____

Email: _____

Fax: _____

USM Department Mailing Code for shipping and mailing purposes: _____

SAMPLE LETTER-A

February 1, 2008

United States Citizenship and Immigration Services
California Service Center
Attn: CAP EXEMPTNH-1B Processing Unit
P.O. Box 30040
Laguna Niguel, CA 92607-3004

Re: H-1 Visa petition of the University of Southern Mississippi for Dr. Hing-Meng Liu

TO WHOM IT MAY CONCERN:

The purpose of this letter is to support the petition of Dr. Liu for an H-1 visa. Dr. Liu will be hired as a Research Assistant on a project aimed at identifying and characterizing the cellular enzyme(s) involved in cleavage/activation of the human immunodeficiency virus (HIV) glycoprotein.

The University of Southern Mississippi is a comprehensive state-supported institution of higher learning. The university's mission is teaching, research and service. USM has grown rapidly and effectively from its beginning in 1912. At the present time, the campus occupies 1090 acres and has 155 buildings. This campus provides a convenient and comfortable setting for academic and professional life. The Department of Polymer Science is an exceptionally active research department. It is recognized internationally and is funded at high levels by both industry and government agencies. The focus of the research project in which Dr. Liu will be involved is on the molecular mechanisms involved in the replication of a group of viruses that includes HIV. This research is supported by four NIH research grants and encompasses work aimed at defining points in the retroviral life cycle at which antiviral therapeutics might be aimed.

Dr. Liu received a master's degree in Biochemistry in 1988 and a Ph.D. in microbiology in 1992 from the University of Alabama, Tuscaloosa, AL. Dr. Liu has 1 year of training as a postdoctoral research with Southern Research institute in Birmingham, Alabama. His academic studies and postdoctoral training was primarily aimed at purification and characterization of lysosomal membrane enzyme. He thus developed expertise in cell fractionation, protein purification, and enzyme characterization and quantitation. His doctoral research has been published in the archives of Biochemistry and Biophysics and has been presented in professional conferences in Japan and Germany.

Dr. Liu will be employed on August, 19, 2007. Dr. Liu's current base salary for the 2007-2008 academic year (9 months) is \$51,450. Dr. Liu will receive additional compensation for teaching summer semester, should he be needed. The salary is funded by the University of Southern Mississippi at a rate commensurate with Dr. Liu's education, experience, discipline, and academic rank. The University's policy as well as the policy of the State of Mississippi Institutions of Higher Learning (the governing body of the University) is to provide annually renewable contracts for faculty members contingent on positive annual evaluations. The University of Southern Mississippi agrees to pay the reasonable cost of return transportation if Dr. Liu is dismissed before the end of the period of authorized employment. In addition, the University of Southern Mississippi will fully comply with the terms of the labor condition application.

Sincerely,

John M. Smith, Ph.D.
Professor and Dean of
Department of Microbiology

SAMPLE LETTER-B

February 1, 2008

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California Service Center
Attn: CAP EXEMPTNH-1B Processing Unit
P.O. Box 30040
Laguna Niguel, CA 92607-3004

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Dr. Liu's appointment will be from August 22, 2007 through August 21, 2010 at an annual salary of \$35,000.00. This salary is funded through a NIH grant and is based on the rate recommended by the National Institute of Health. USM agrees to pay the reasonable cost of return transportation if Dr. Liu is dismissed before the end of the period of authorized employment. In addition, USM will fully comply with the terms of the labor condition application.

Sincerely,

John M. Smith, Ph.D.
Professor and Dean of
Department of Microbiology

Alien number (if any): _____

Date of last arrival in U.S.: _____

I-94 number: _____

Current non-immigrant status: _____ Expiration date: _____

Passport number: _____ issued by (country): _____

Expiration date: _____

Give dates of proposed travel outside of the U.S. within the next 12 months:

Describe the proposed dates:

Present occupation and summary of prior work experience:

Please note: If you are currently residing outside the United States and have been a visitor here previously in any other status other than B1/B2 visitor; you must provide details of this nonimmigrant status. Details about this status are critical to me being able to fully assess this process. Please provide these details below and attach any pertinent documentation: _____

PLEASE NOTE: You must attach copies of all your previous immigration documents and information including your important passport pages. In addition, please provide copies of all receipt notices if you have applied for labor certification, etc.