



# H-1B VISA Information

## **OVERVIEW OF H-1B**

The H-1B category is for persons who are coming to the U.S. to be temporary workers in a specialty occupation. To be considered eligible for H-1B, the position must require at least a Bachelor's degree. Employment approval is granted through the U.S. Citizenship and Immigration Services and is job specific as well as employer and department specific. The H-1B status may be granted initially for up to a three-year period with a maximum total stay of six years. Workers in this category can fill permanent positions, but must leave the country at the end of their authorized period of stay. A person in H-1B status is considered to have dual-intent with regards to immigration. This means that while in H-1B status, workers may file for a change to another immigration category. H-1B is often the category used while in the process of applying for U.S. permanent residency.

## **TIMING OF FILING – PLAN MORE THAN 6 MONTHS IN ADVANCE**

At the earliest, Human Resources may submit an H-1B petition to US Citizenship and Immigration Services 6 months before the intended beginning effective date of the H-1B. The H-1B application process is very long and requires much documentation from both the department and applicant. It is recommended that departments begin any new H-1B application, extension, or amendment as close to 6 months in advance of the intended start date as possible.

If timing is a critical issue such as with a new professor hired in the summer months who must begin work at the beginning of the fall semester, departments have the option of filing for Premium Processing. Premium Processing guarantees a decision on an H-1B petition within 15 days of the receipt by US Citizenship and Immigration Services of the I-129, H-1B application. The cost of Premium Processing is \$1410 in addition to the regular \$460 application fee and the \$500 anti-fraud fee for new H-1B applications. These fees do not include the legal fees that are required to be paid to Ware Immigration.

## **HIRING AN INTERNATIONAL WHO IS OUTSIDE OF THE UNITED STATES**

If the applicant is outside of the U.S. with no current visa status, the applicant must submit all requested documents to Human Resources.

When the H-1B is approved, the US Citizenship and Immigration Services will cable the approval to the consular office abroad where the visa will be obtained by the applicant. The original approval notice for the H-1B will be sent to Human Resources via Ware Immigration.

Because this is new H-1B employment, both the filing fee of \$460 and the anti-fraud fee of \$500 are required of the department.



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### **HIRING AN INTERNATIONAL WHO IS IN J-STATUS (J-1 OR J-2)**

If the H-1B applicant is currently in the U.S. in J-Visa status, it may be possible to petition for a change from J-Visa status to H-1B. There is one important note when concerning applicants who are in J-Visa status - many J-Visa programs require the individual to complete a two-year home residency requirement [212(e) Rule] in the J-Visa holder's home country. It is sometimes possible for the J-Visa holder to get a waiver of the two-year home residency requirement through the Department of State, but the waiver must be granted before Human Resources can process the H-1B application.

More information about the waiver requirements and processes are on the U.S. Department of State website: [http://travel.state.gov/visa/temp/info/info\\_1296.html](http://travel.state.gov/visa/temp/info/info_1296.html). It is important to note that once a waiver of the 212(e) two-year home residency requirement has been approved, the J-Visa holder's DS-2019 cannot be transferred or extended at all.

Because this is new H-1B employment, both the filing fee of \$460 and the anti-fraud fee of \$500 are required of the department.

### **HIRING AN INTERNATIONAL WHO IS ON F-1 OPTIONAL PRACTICAL TRAINING (OPT)**

If the H-1B applicant's current work authorization is based on F-1 Optional Practical Training and the proposed job is in the applicant's major field of study, then employment with the University of Southern Mississippi may begin and continue until the OPT expires. The H application must be approved prior to the expiration of the OPT in order to avoid a lapse of work authorization.

*Employment must stop if the H-1B has not been approved and the practical training period expires.*

Because this is new H-1B employment, both the filing fee of \$460 and the anti-fraud fee of \$500 are required of the department.

### **HIRING AN INTERNATIONAL WHO IS CURRENTLY IN H-1B STATUS WITH ANOTHER EMPLOYER**

If the H-1B applicant is currently in the U.S. in H-1B status with another employer, it is possible for the applicant to begin working for the University of Southern Mississippi before the I-797, H-1B approval notice is received.

According to the

U.S. Immigration and Naturalization Act as amended by the American Competitiveness for the 21<sup>st</sup> Century Act of 2000, [AC21 § 105], [INA § 214 (a) (m)], non-immigrants currently in H-1B status with one employer (other than the University of Southern Mississippi) 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. Human Resources will authorize employment to begin as soon as the I-129 receipt notice (the official notice of application receipt from USCIS) arrives.

Unlike an extension of H-1B, hiring an applicant who is currently in H-1B status with another employer is treated as NEW H-1B employment. Thus, both the filing fee of \$460 and the anti-fraud fee of \$500 are required of the department.

It is important to note that any time spent in H-1B status counts toward the 6-year limit for H-1B holders.



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### AMENDING H-1B STATUS FOR A CURRENT EMPLOYEE OF THE UNIVERSITY OF SOUTHERN MISSISSIPPI

When there is a change in the duties or terms and conditions of employment of an H-1B worker, an amended I-129, H-1B application may be needed. According to I.N.S. field memorandum CO 214h-C, an amended H-1B application is necessary if the H-1B worker's job duties change significantly (e.g. from postdoctoral research to college teaching) or when there is a significant change in salary which would require the filing of a new LCA with the Department of Labor.

Minor changes in the conditions of employment do not require the filing of an amended H-1B petition. Though, minor changes should be noted in any future extension of H-1B status. Minor changes would include a change of job title with no or minimal changes in job duties or an unsubstantial salary increase.

**Amended H-1B applications must be filed before the proposed change in status goes into effect. A change of duties or salary will not be approved until Human Resources receives the I-129 receipt notice (the official notice of application receipt from USCIS).**

An amended application for an H-1B worker currently employed by the University of Mississippi requires the department to pay the filing fee of \$460 only. Otherwise, the application process for an H-1B amendment is exactly the same as it is for a new H-1B application.

### EXTENDING H-1B STATUS FOR A CURRENT EMPLOYEE OF THE UNIVERSITY OF MISSISSIPPI

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

An extension for an H-1B worker currently employed by the University of Mississippi requires the department to pay the filing fee of \$460 only. Otherwise, the application process for an H-1B extension is exactly the same as it is for a new H-1B application.

If the H-1B extension is not filed before the expiration of the current H-1B status, employment must stop until the H-1B is approved and the I-797 approval notice is received by Human Resources.



# H-1B VISA Information

## H-1B PROCESSING STEPS

### THE DEPARTMENT and the H1B Applicant:

- To begin the H-1 process, the department should complete the **Request for H1B Form** located on the HR website.
- Once this form is submitted, Human Resources will contact the hiring department and the H1B applicant with more information.
- Human Resources will require the completed Employer Questionnaire along with the Job Description and Offer Letter from the department.
- Human Resources will require the completed Employee Questionnaire along with the following supporting documents from the H1B Applicant:
  - Curriculum Vita/ Resume which includes current address, home country address, statement of work history, and list of publications
  - Copy of highest university-level academic diploma, and transcripts/mark sheets. (Does not have to be originals but must be translated to English but a certified company).
  - Copies of 3 most recent pay stubs/ paycheck notifications if currently employed in the US
  - Copy of Passport Identification Pages (Full-page photocopies ONLY. Do not cut the photocopy to the shape of the passport)
  - Copies of current/ most recent Visa Stamp
  - Copies of I-94
  - Copies of all previous I-20's, DS-2019's, IAP-66's, and H-1B or H-4 I-797 Approval Notices
  - Copy of Employment Authorization Card (i.e. F-1 OPT Card or J-2 EAD Card) if currently working on Employment Authorization
  - Proof of I-612 waiver or completion of 212(e) Two-Year Home Residency Requirement if currently or previously on J-Visa
  - H-4 Application: If you have dependent family members who are already in the U.S and you would like to change/extend their status as an H-4 dependent, include the following:
    - Form I-539 (available on [www.uscis.gov](http://www.uscis.gov) site) and check for \$370 made payable to **Department of Homeland Security**
    - Include the above starred (\*\*) items for your family members
    - Plus \$85 biometric fee (new requirement starting March 11, 2019).
- Departments must pay the standard H-1B filing fee of \$460. Departments must pay an additional anti-fraud fee of \$500 for *new* H-1B applications. Additionally, if Premium Processing is being sought for an expedited service, there is an additional filing fee of \$1410. Per Accounts Payable, these expenses can be processed on a remittance voucher and should be sent to Sandra Howard at box 5104. There is no need to process these expenses on a PO. Please see to it that this amount is paid timely and mailed to David Ware's office. The check should be made out to Ware Immigration. The check can be mailed to the Office of David Ware at 3850 N. Causeway Blvd., Ste. 555, Metairie, LA 70002. Please make sure that the one cutting the check references your employee so Mr. Ware's office knows who the check is for.



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### **H-1B PROCESSING STEPS (continued)**

- Once Human Resources receives the questionnaires from the department and the H1B Applicant, Human Resources can start processing the H-1B application.
- Human Resources will send the Actual Wage Memorandum, Department Attestation Form, and Export Control Certification to the department for completion.
- Ware Immigration will send the Notice of Filing to HR; who will forward to the hiring department to be posted for ten (10) business days. The hiring department must notify HR once the Notice of Filing is posted and the ten (10) days begin. Once the ten (10) days are up, the hiring department will send back to Human Resources for filing.
- Ware Immigration will send Human Resources the invoice and Human Resources will forward to the hiring department.
- Ware Immigration and Human Resources will coordinate the last steps of the process and comply all needed materials. Once done, Ware Immigration will submit the application to US Citizenship and Immigration Services (USCIS).

### **US CITIZENSHIP AND IMMIGRATION SERVICES:**

- Once the USCIS receives the complete H-1B application and filing fees, they will send Human Resources an I-129 Receipt Notice, which is an official notice indicating the date that the application was received and giving the applicant a receipt number. With the receipt number, the status of the application may be tracked on the USCIS website: [www.uscis.gov](http://www.uscis.gov).
- When the H-1B petition is approved, USCIS will send the I-797 approval notice to Human Resources. The applicant and the department will be notified of the approval. Copies of the I-797 approval notice will be given by Human Resources and the original will be given to the H1B applicant.