



The H-1B Specialty Worker Visa

The H-1B visa is intended for foreign specialty workers who will be working in the United States for a United States employer. The maximum duration of an H-1B visa is six years, and the number of overall H-1B visa holders permitted in the United States is limited. As with most employment-based visas, the petition for the visa is submitted by the employer on behalf of the employee.

Requirements

- The employer must be a United States person or entity;
- The occupation must be a specialty occupation, typically one which requires application of a body of highly specialized knowledge and which requires a bachelor's degree or higher;
- The proposed employee must be qualified for the specialty occupation and possess a bachelor's or higher degree (or its foreign equivalent, as determined by a person authorized to perform such evaluations) in a field related to the occupation; and
- The employee must have any other licenses, certificates, or degrees required for the specialty occupation.

Documentation

In order to apply for the H-visa we would require the following information (please do not send original documents, as the INS accepts photocopies):

- Passport;
- Complete resume, providing detail as to the applicant's qualifications for an executive or managerial position or providing technical support and training for US employees, the applicant's responsibilities in his or her current position, and the applicant's cities of residence for the past five years;
- University or graduate degrees along with any translations or evaluations of those degrees;
- Description of the position to be held in the United States and the wages and duties for that position;
- Any information which is available about the method used to determine wages, particularly wage studies or other sources of wage information;

- Documentation showing that the employer is a US corporation and a viable, operating business and any information as to current and future revenue, staffing, and expansion which is available (a general overview of the company, its employees, and its plans for growth);
- I-94 Departure Record (white card), form I-20, and/or Form IAP-66 (where available); and
- A recent pay statement, if available.

Procedure

The application for an H-1B visa is a three step process. First, the applicant (the employing company) files a Labor Certification Application (LCA) with the Department of Labor, certifying that the employer is paying the same wage to the H-1B worker as it would be paying to a US citizen. In order for the wage to be certified, the wage paid to the employee must be the higher of (1) the *actual* wage paid by the employer for employees of a similar experience and qualifications for that occupation or (2) the *prevailing* wage for the employee's occupation in the geographic area. The employer may choose to pay more than the required amount.

In order to meet this criteria, we will have to determine the actual wage and the prevailing wage for the position. An employer who files an application for an H-1B visa must keep the LCA, related wage studies or surveys, copies of the posted notices, and information as to where and when the notice was posted in a file, available for public inspection upon request.

Once the LCA has been approved the second step in the visa application process is the preparation and filing of a petition for a non-immigrant visa with the Immigration and Naturalization Service (INS), along with the filing fee and, in most cases, the additional fee of \$1000. Certain non-profit organizations and educational institutions are not required to pay the additional \$1000 fee, and after the second extension the employer does not need to pay the fee. The employee is not permitted to reimburse the \$1000 to the employer.

The application is filed with the United States Immigration and Naturalization Service ("INS") here in the United States, and usually takes between one and three months to process. Please note that INS processing times can vary significantly, so it is impossible to accurately predict approval times.

Once the approval is given, a visa application is submitted at a consulate in the parent company's home country. Processing times vary considerably at the different consulates.