

Cleveland State University's H-1B Guidelines

Overview:

U.S. employers use the H1B visa program to employ foreign workers in “specialty occupations” that require the theoretical or practical application of a body of highly specialized knowledge. At CSU, most “specialty occupations” are faculty positions, but various staff positions may also be eligible for H1B status. The general requirements for a position to qualify as a “specialty occupation” are: a bachelor’s degree or higher as the minimum educational qualification for the position, the degree requirement is usual for similar positions within the field, and the employer normally imposes this requirement for employees hired into the position, and the duties required by the position are so complex that the knowledge required to perform them is associated with the attainment of a bachelor’s degree or higher.

H1B status is obtained only by employers, who are designated as the Petitioner. The foreign national employee is the Beneficiary of the petition. Petitioners are responsible for all costs associated with the petition, including filing fees paid to USCIS, attorneys’ fees, and all associated expenses. At CSU, the hiring department or college is responsible for filing fees while the Office of General Counsel pays any fees to outside attorneys providing services related to the H1B petition. Employees are not required to pay anything associated with the H1B; employees who have dependent spouses or children requiring H4 status, however, are responsible for filing fees associated with the H4 petition(s).

Process Outline:

1: The Hiring Department or College requests H1B services.

The Chair or Dean of the hiring department must complete the Terra Dotta portal (TD) Sponsorship Request from the CISP office webpage to begin the H-1B process on behalf of the beneficiary. The request should include the employee’s name, the position (including a copy of the job description

– preferably from the job posting), the LOI and the CV. If the new employee is already in H1B status with another employer, this information (including the date H1B authorization began) should also be included in the request.

Every Beneficiary will provide the following documentation:

- Copy of all diplomas and transcripts;
- Copy of current curriculum vitae or resume; and
- Color copy of current passport including:
 - the biographic information page
 - any pages with visas and stamps

- front and back covers
- Color copy of birth certificate

Additional documents are needed from the Beneficiary if he/she is in the United States

- A copy of the most recent visa used to enter the United States
- A color copy of most recent I-94 card (front and back)
 - If a new I-94 was not issued at the most recent port of entry, obtain and print a copy from U. S. Customs and Border Patrol website at <http://www.cbp.gov/travel/international-visitors/I-94-instructions>
- If currently employed in the United States, please provide three recent paystubs and most recent W-2 statement

Additional documents are needed from the Beneficiary if he/she held a prior status in the United States:

Copies of all Notices and other documents related to all prior or current immigration statuses received from USCIS, the US Department of State, US Customs and Border Enforcement, etc., including but not limited to the following:

➤ *Prior or current J Status*

Copies of all Forms DS-2019 and (if applicable) a color copies of all Employment Authorization Documents (EADs) - front and back;

If subject to 212(e), please provide a copy of the recommendation for a waiver from the U.S. Department of State or the I-612 waiver approval notice from the USCIS.

➤ *Prior or current H-1B or H4 Status*

Copies of all previous I-797 approval notices.

➤ *Prior or current F-1 Status*

Copies of all Forms I-20 as well as the front and back of any EADs that were issued to you.

➤ *Prior or current L-1 status*

If you ever held L-1 status please provide a copy of all I-797 approval notices

Step 2: Labor Condition Application (LCA)

The CISP with outside counsel will prepare and submit an LCA to the Department of Labor. The LCA is a requirement of the DOL to ensure that foreign nationals are paid an actual wage equal or greater than that paid U.S. workers in the same position category and geographic region. The DOL takes 7 days to certify an LCA. The CISP office will prepare the public inspection file and prepare the required Notice of Filing.

For positions that are part of a collective bargaining unit, CISP will provide the Notice to the relevant union representative.

For positions not represented by a union, OGC will have one copy of the Notice posted on the Human Resources Department bulletin board. A second copy of the Notice will be emailed to the Hiring Department contact and MUST be posted, on the day it is sent, on a bulletin board or other area where Departmental notices are usually posted. The posting should be confirmed by return email immediately in order to avoid a delay in processing the LCA. Federal regulations require that both copies of the Notice remain posted for 10 consecutive business days. At the end of the 10 business days, the Department contact should remove the posting, write the dates on the back that the Notice was posted, sign below the dates, and return the Notice to the CISP office (hand delivery or campus mail).

Step 3: Drafting the H-1B Petition

The CISP along with outside counsel will complete Form I-129, applicable supplements, and a support letter based on information provided by the Beneficiary and Department contact. The draft documents will be sent to both the Department and Beneficiary for review. Department contact will make any needed changes to the draft support letter, print it on CSU letterhead, and sign and upload it to TD portal. CISP will make any corrections to the I-129 and supplements and send them to the Department Chair or Dean, as the Hiring Department designates, for signature.

USCIS Fees: The I-129 filing fee is \$460; this fee applies to each I-129 filed, whether on behalf of a newly-hired Beneficiary or to extend an existing H1B authorization. I-129s filed for newly hired Beneficiaries also require an additional \$500 Fraud Detection and Prevention fee. The Hiring Department or College must provide billing account numbers for all fees related to H1B filings and enter the details in the TD portal Sponsorship Request.

For Beneficiaries with dependent spouses or children, outside counsel will prepare the Form(s) I-539 for the H-4 application. The Beneficiary is responsible for providing necessary documentation; the Beneficiary is also responsible for all I-539 filing fees.

- Please note: If the H-1B Beneficiary and Dependents are not in the United States when the I-129 Approval Notice is issued, it will not be necessary to file Form I-539 to obtain H-4 status for the Dependents. The Dependents may apply for H-4 visas at the consular office at the same time as the Beneficiary applies for the H1B visa.
- If an H-1B petition was filed for a Beneficiary within the United States, he/she should not travel abroad while the H-1B petition is pending. If the Beneficiary's H-1B status is close to expiring, we request that the Beneficiary contact us PRIOR to making plans to travel abroad.

Step 4: H-1B Adjudication

The Beneficiary and the Department will be notified by the CISP when a decision is received from USCIS. If an Approval Notice is received the CISP office will contact the Beneficiary to make arrangements to visit CISP. During this visit, the Beneficiary will receive the new I-94 (the bottom portion of the first page of the Approval Notice), as well as a complete copy of the Approval Notice. The Beneficiary may use the original Approval Notice to update or complete his/her I-9 in the Department of Human Resources, to obtain or renew a driver's license, and for travel outside the US; the original Approval Notice is a part of the University's file and must be

returned to CISP after use. **The Department and the Beneficiary should carefully review the below section for important information** concerning maintaining the Beneficiary's H-1B status.

Maintaining Your H-1B Status

Validity Dates/Available Recapture Time:

The validity period of your H-1B status is for the duration of time listed on the original I-797 Approval Notice. H-1B status may be granted for a maximum of six years in increments not to exceed three years. The CISP office needs to file to extend the Beneficiary's status before the end date listed on the I-797 Approval Notice. Therefore, the Beneficiary should email CISP approximately 6 months before the expiration of their status to see if he/she is eligible for an extension.

*The USCIS only counts the time that the beneficiary is actually in the U.S. towards the six year cap. The Beneficiary may be eligible to recapture the time spent traveling abroad during the validity period if necessary. The USCIS will require evidence of time spent abroad (arrival/departure records, passport stamps, flight itineraries, etc.) Therefore, the Beneficiary should keep a copy of these documents.

Form I-94

When the Beneficiary travels abroad, he/she should always print a copy of their new I-94 card from the [CBP website](#) and verify that "admit until date" matches the expiration date listed on the I-797 Approval Notice. If the date is less than the Approval Notice date the Beneficiary should contact the CISP office as soon as possible.

*The port of entry admitting officer may at his/her discretion grant an additional 10-day grace period to the I-94. The 10-day grace period is intended to allow the Beneficiary additional time to coordinate their departure from the U.S. The Beneficiary is not allowed to work for the additional 10 days.

Passport Validity

The Beneficiary is required to have a valid passport at all times in order to maintain H-1B status. The Beneficiary's passport must be valid for more than 6 months of the date that the Beneficiary seeks to enter the U.S.

Terms of Employment

H-1B employees can do only the work that is listed on their H-1B petition. The Beneficiary can **only** work for Cleveland State University and **only** for the Department listed in the petition. The job title, duties, and location of the job must match what is listed on the petition. If the Department anticipates a job change, the Department should contact the CISP office in advance so that a decision can be made to determine if it is necessary to file a new H-1B petition. If the Beneficiary is planning to work for another employer while working for

Cleveland State University, in addition to requesting permission from Cleveland State University, the outside employer must apply for a separate H-1B.

If the Beneficiary ends his/her employment with Cleveland State University before the expiration of the H-1B Approval Notice, the Department must notify the CISP office. Cleveland State University is required, by law, to notify USCIS that the employment has terminated. Upon notification, USCIS will revoke Cleveland State University's H-1B petition for the Beneficiary.

Change of Address

Foreign nationals are required by law to notify of a residential address change within 10 days of moving to the new address. You may notify the USCIS electronically by clicking [HERE](#). The Beneficiary will need to provide the date and location of entry into the U.S. the old address, and the new address. If the Beneficiary has an immigration case pending, he/she will also need to provide the pending case receipt number.

Travel

Approved H-1B Petition With Consular Notification

If the H-1B petition was filed while the Beneficiary was outside the United States for new employment at Cleveland State University, then the Beneficiary will need to obtain an H-1B entry visa from a United States consulate or embassy. This visa will be placed in the Beneficiary's passport which will be stamped upon his/her entry into the United States. The Beneficiary should carefully review the [U.S. Department of State's website](#) when preparing his/her H-1B visa application to determine the necessary documentation, fees, and procedures associated with acquiring the H-1B visa.

*Some nationals are exempt from having to obtain an H-1B entry visa. Please review the U.S. Department of State website to determine if your country is exempt.

Approved H-1B Petition Filed As Change of Status

An H-1B Beneficiary that received a change of status within the United States does not need to obtain an H-1B entry visa unless he/she plans to travel. An entry visa is only required when an individual is attempting to return to the United States. Beneficiaries should not enter the United States using a prior status visa. Please review the information below for helpful tips on obtaining an H-1B visa.

*Some nationals are exempt from having to obtain an H-1B entry visa. Please review the U. S. Department of State website to determine if your country is exempt.

How to Obtain an H-1B Visa

Required Documentation. Please carefully review the [U.S. Department of State website](#) when preparing an H-1B visa application to determine the required documentation to acquire an H-1B visa. Consulates in different countries and locations may require different documentation and some have different procedures.

Timing Issues. The time it takes to obtain an H-1B entry visa can vary. There is usually a wait to attend an interview and additional waiting period to receive the visa in your passport. It is also possible for an applicant to be selected for administrative processing, which can cause a significant delay. Therefore, an H-1B visa may be obtained in as short of a time as a few days or weeks. Please allow enough time to obtain an H-1B entry visa necessary.

Note: Even if an H-1B Beneficiary has an H-1B Approval Notice the U.S. consulate/embassy is not required to issue an H-1B entry visa.

*As a general rule, as long as an H-1B Beneficiary has:

- a valid H-1B approval notice; a passport valid for at least 6 months past the date of admission to the United States;
- a valid H-1B entry visa;
- and has maintained his/her H-1B status; the beneficiary may travel internationally.

H-1B Nonimmigrant Visa

General H-1B Questions & Answers

Who is eligible for H-1B status?

Departments may file an H-1B petition to receive temporary authorization for a foreign national to work in a “specialty occupation” that requires the equivalent of a bachelor’s degree or higher in a specific field. If the Department is unsure if the position qualifies for an H-1B filing.

How long can an individual work in H-1B status?

H-1B status can generally only be held for a maximum of 6 years; however, in limited circumstances, individuals may be eligible for additional time.

Can an H-1B Beneficiary bring his/her dependents to the United States?

H-1B Beneficiaries may file an H-4 application on behalf of a legal spouse and dependent children under the age of 21. H-4 status will allow dependents to reside in the United States and to attend school. Important Note: H-4 holders may **not** be employed.

What is the H-1B CAP and are Cleveland State University employees subject to the CAP?

Each fiscal year there are a predetermined number (“numeric CAP”) of H-1B visas available for United States employers to sponsor foreign nationals for positions within specialty occupations. The USCIS begins accepting H-1B petitions on April 1 of each fiscal year. Once the CAP has been reached, employers are unable to request H-1B status for new employees for that fiscal year.

There are certain employers that are exempt from this numeric limit. Institutions of higher education are exempted employers. Therefore, Cleveland State University is Cap exempt. Because of this exemption, Departments within Cleveland State University have the ability to file H-1B petitions for new employment as needed.
