

Your Immigration Questions Answered by VisaPro.

Here, you will find detailed answers to many of most common immigration questions.

1. What is H-1B work visa?

The H-1B specialty workers visa is a nonimmigrant visa which allows foreign nationals to enter into the U.S. and perform services in a prearranged professional job. The job must be in a 'specialty occupation' and must require a bachelor's degree as a minimum for entry into the field.

Note: *The H-1B work visa allows an organization with an IRS Tax Number/ Federal Employer Identification Number to employ a foreign national for up to six years.*

2. What is 'specialty occupation' for the purposes of H-1B visa?

A specialty occupation requires theoretical and practical application of a body of specialized knowledge along with at least a bachelor's degree or its equivalent.

Note: *Architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts are specialty occupations.*

[↑TOP](#)

3. How do I qualify for H-1B visa?

To qualify for H-1B visa, you must:

- Demonstrate that you have the ability to work in the specialty occupation that requires the theoretical and practical application of highly specialized knowledge
- Be coming to the U.S. to earn money or a livelihood working in a professional capacity, and not for pursuing a hobby, for pass time, giving free advice or humanitarian service
- Seek temporary entry into the U.S.
- Have a bachelor's degree or the equivalent in work experience. You should have bachelor's degree plus three years of work

experience for each year of missing university education. This would be considered four-year bachelor's degree

4. What are the benefits of H-1B visas?

The benefits of H-1B visa are:

- **Multiple H-1B visas:** In most cases, there are no limits to the number of H-1B visas an individual may have in their lifetime
- **Green Card:** The H-1B professionals may simultaneously seek Lawful Permanent Residency or a [Green Card](#) for themselves and for their family
- **Cost of early dismissal:** The employer must agree to pay the foreign national the reasonable cost of transportation to go back to his/her home country if the employer terminates employment prior to the end of the authorized employment period. The foreign national will then go back to his/her home country. Normally, this is not a problem since the foreign national usually desires to stay in the U.S. and changes into another nonimmigrant status
- If you change jobs you must reapply for a new visa, under the new position. This does not mean that you have another six years. The H category visa allows you to stay in the country for six years, regardless of whether you changed employers during this period. Those who arrived in the country on H-4 visas, and converted to H-1B status, have to remember that this six-year period starts counting from the day they arrived in the country on their [H-4](#) visa

 [TOP](#)

5. What are the limitations of H-1B visas?

The limitations of H-1B visa are:

- **Temporary Duration:** Because of the H-1B visa's temporary nature, individuals who seek H-1B visa must have the intent to remain in the U.S. only temporarily. However, individuals who seek H-1B visas need not maintain a foreign residence and may later petition for Lawful Permanent Residence. If a petition for Lawful Permanent Residence is not made or the petition for Lawful Permanent Residence is denied, the H-1B worker will be required to return to his/her home country at the end of the authorized employment period
- **The H-1B Cap:** An annual numerical limit is imposed on the number of H-1B visas issued during a fiscal year. For the fiscal

year 2003, the cap is 65,000. However, the quota only applies to new H-1B applications, and does not apply to H-1B status holders who are seeking extensions or change of employer

6. What is the validity period of H-1B visa?

Generally H-1B visa is granted for three years. It may then be extended, in the first instance for two more years, and eventually for another one year.

For further extension, the H-1B professional must remain outside the U.S. for at least one year before becoming eligible for another H-1B visa. If the professional acquires permanent residency (Green Card) he/she need not remain outside the country for one year. Certain foreign nationals working on Defense Department projects may remain in H-1B status for 10 years.

The six year limit has been relaxed by a new law on October 17, 2000. Now, you may apply for [Extension of Stay](#) of one year at a time, until your [Green Card](#) application is processed. The restriction is that you should have applied for Green Card within five years of being on H-1B.

7. Can I bring my dependents on H-1B visa?

Yes, you may bring your dependents on H-1B visa. Your spouse and unmarried children are entitled to an [H-4](#) visa and they can stay as long as you maintain valid H-1B status. However, they may not accept employment, but may attend school in the U.S. You may even bring your servants on [B-1](#) visa.

[↑TOP](#)

8. How do I apply for H-1B visa?

An individual may not apply for H-1B visa. H-1B status requires a sponsoring U.S. employer. A U.S. employer has to sponsor the H1B petition to employ a foreign professional.

9. How should an employer petition for H-1B visa?

The Forms to be filed for an H1B petition are:

- [Form ETA-9035](#), Labor Condition Attestation, with the Regional Department of Labor office. Through this application your employer assures the DOL that he/she will provide you with

fair salary and equal benefits which are provided to a U.S. citizen. It also states that it was not able to find any U.S. citizen who was qualified for the position

- [Form I-129](#), Petition for Nonimmigrant Worker, with [H Supplement](#), and supporting documentation including the approved LCA should be filed with the USCIS Regional Service Center having jurisdiction over the city of intended employment. When it is approved, the employer or agent is sent a notice of approval Form I-797 and a copy of it is forwarded to the American Consulate

10. What is the processing time for H-1B visa?

The H1B [processing time](#) varies because all cases are different. Generally it takes between three to six months to process an H-1B visa. You must wait at least two weeks after you send in your application for a receipt from the USCIS and another two weeks before you call the USCIS to check the status.

Note: When USCIS officials get your application package, they will send you a receipt showing the date your case was received and the receipt number assigned to it. Use the receipt number to track the status of your application when you call the number listed at the bottom of the receipt notice.

11. What do you mean by 'H-1B dependent employer'?

An employer runs the risk of becoming an 'H-1B dependent employer' if he hires too many H-1B employees. Employers are considered to be H-1B dependent if they fall into any one of the following three categories:

- An employer has 25 or fewer full time employees of which more than seven are H-1B employees
- An employer has between 26 to 50 full time employees of which more than 12 are H-1B employees
- An employer has more than 50 full time employees of which 15% or more are H-1B employees

When should I file my H-1B petition if I am currently under optional practical training on F-1 visa?

You may file for H-1B status while in your practical training itself. Getting H-1B takes a lot of time and sometimes you might have to wait for three to four months before you resume employment. If you file your H-1B petition while in the practical training, you will have your H-1B ready by the time you are out of training. If the H-1B petition is filed before the expiry of [F-1](#) or [B-2](#), you will not be out of status. If your OPT expires before the H-1B is approved, you cannot legally work until the H-1B is approved.

What is the difference between H-1B status and H-1B visa?

An H-1B visa is a nonimmigrant visa issued by a U.S. Embassy or Consulate abroad. H-1B status is a nonimmigrant status issued by the USCIS to foreign nationals already residing in the U.S. or upon entry with an H-1B visa. Legal status allows you to stay legally within the U.S. while a visa allows you to seek entry into the U.S. legally.

14. I have been fired recently while on H-1B status. Can I remain legally in the U.S. by changing status to another nonimmigrant visa category?

Yes, you may apply for [Change of Status](#) to another nonimmigrant visa

category for which you qualify. USCIS officers have been allowed to exercise their discretion to grant you another nonimmigrant status, if you apply for change of status within 10 days after you are fired.

Note: *If you are not planning to depart the U.S. the only way to maintain legal status is to file a new petition under a new employer or change status from H-1B to other nonimmigrant status, such as [B-1](#) or [B-2](#).*

 [TOP](#)

15. What is the new 'displacement' or 'no lay-off' attestation rule?

There are two new 'displacement' attestations that apply to H-1B dependent employers:

- ▶ The first requires the employer to attest that he did not displace and will not displace a U.S. worker employed by the employer within the period beginning 90 days before and ending 90 days after the filing of the H-1B petition based on the [Labor Condition Application](#)
- ▶ The second requires the employer to attest that he will not place the H-1B worker with another employer where:
 - The H-1B worker performs duties in whole or in part at one or more worksites owned, operated and controlled by the other employer
 - There are employment relationships with the other employer, unless the petitioning employer has inquired of the other employer and has no knowledge that the other employer has displaced or intends to displace another U.S. worker

What are the documents required to apply for H-1B visa outside the U.S.?

The documents required for H1B visa application are:

▶ Passport

▶ Documents sent by your employer:

- LCA - Labor Certification Approval
- Appointment letter by your Employer
- Tax Returns Papers of the company (if your employer sends them)
- Copy of letter to the Department of Justice
- Copy of letter to the Consular General of the Indian consulate
- Copy of the official evaluation of your degrees (if your employer sends it)

▶ Your certificates:

[↑TOP](#)

- Degree certificate
- PG certificate (if applicable)
- Appointment and Relieving certificates for all the companies where you claim employment or Service certificates from the company giving dates and duration of your service

▶ Dates of any prior stays in the U.S. in H-1B status

▶ Very short description of job duties with the sponsoring U.S. Company

▶ If occupation requires licensure in the U.S., copy of current U.S. license or temporary license

▶ A copy of your resume, any additional diploma or supporting certificates, just for good measure

▶ Two Demand Drafts made in favor of the name specified - one for Processing Fee (\$45)* and

the other for Issuance Fee (\$100)

- ▶ Two/three passport size color photographs

- ▶ If processing **H-4** visas for dependent family members, copies of biographic and visa pages for all family members:
 - Copies of children's birth certificates ■
 - Copy of marriage certificate

What are the documents required to apply for H-1B status when already in the U.S.?

The documents required to process an H-1B petition while in the U.S. are:

- Copy of the biographic and visa pages of current passport
- Present U.S. address
- Foreign address (may be address of parents or closest relative)
- Day and evening phone numbers and/or e-mail address
- Copy of Form I-94 card
- Copy of all prior H-1B approval notices (if currently on [F-1](#) status, copy of [Form I-20](#))
- Dates of any prior stays in the U.S. in H-1B status
- Current resume listing employment history
- Copy of your university or college degree, and if available, copy of university or college transcripts
- If you have ever obtained a credentials evaluation, a copy of the credentials evaluation
- Title with the sponsoring U.S. Company
- Very detailed description of job duties with the sponsoring U.S. Company
- If occupation requires licensure, copy of current license or temporary license
- Social Security number
- Copy of most recent W2
- Copy of most recent pay slip with current employer

[TOP](#)

What factors determine the prevailing wage for an H-1B beneficiary?

Relevant factors in determining prevailing wage include:

- Job title ■
- Educational and work experience requirements ■
- Job duties ■
- Job location ■
- Labor contract terms ■

19. What is the checklist for employers of H-1B applicants?

- Copy of employment agreement, if any ■
- Salary of the foreign worker ■
- Full corporate name and address ■
- Address where the foreign professional will be working ■
- Name, title, phone number, fax number, e-mail address of company contact who will sign the petition ■
- H1B visa employer's federal I.D. tax number ■
- Gross and net annual income for the employer for the most recent year for which such figures are available ■
- Current number of employees ■

[↑TOP](#) ■

- Year the company was established
- Company brochure or other relevant company literature, if available
- Number of H-1B workers on staff
- Title and a detailed description of the position, including responsibilities and duties
- Twenty pieces of corporate letterhead stationary

What is the new legislation on H-1B visa?

The most recent legislation on H-1B is the American Competitiveness in the 21st Century Act of 2000, which became effective on October 17, 2000. The new legislation permits extension of H-1B status past the six-year limit where a labor certification has been pending for 365 days or longer, regardless of whether or not a [Form I-140](#), Immigrant Petition for Alien Worker, has been filed. Another Act on H-1B is the 21st Century Department of Justice

Appropriations
Authorization
Act, effective
since November
2, 2002.

By Car

From Manhattan

Take the Brooklyn Battery Tunnel (I-478) to the Brooklyn-Queens Expwy (I-278 West). Take Exit 22 to the Belt Pkwy East. Take to Exit 7 (Ocean Pkwy). Turn right onto Ocean Pkwy and continue to Surf Ave. to the New York Aquarium.

From Long Island & Queens

Take the Belt Pkwy West to Exit 7B (Ocean Pkwy). Turn left onto Ocean Pkwy and continue to Surf Ave. to the New York Aquarium.

From Connecticut, Westchester County and the Bronx

Take the Hutchinson River Pkwy (I-678) South, over Bronx-Whitestone Bridge, and continue south on I-678 (Whitestone Pkwy) to Van Wyck Expwy. Then take Belt Pkwy West to Exit 7B (Ocean Pkwy). Turn left onto Ocean Pkwy. and continue to Surf Ave. to the New York Aquarium.

From Staten Island

Take the Staten Island Expwy (I-278) East across the Verrazano Narrows Bridge, to Belt Pkwy East to Exit 7S (Ocean Pkwy South). Take Ocean Pkwy to Surf Ave. to the New York Aquarium.

From New Jersey

Take the New Jersey Turnpike to the Goethals Bridge (Exit 13) to the Staten Island Expwy (I-278). Follow the directions from Staten Island (above).