



University at Buffalo
The State University of New York

Office of International Education
Immigration Services

H-1B TEMPORARY WORKER STATUS FOR UNIVERSITY AT BUFFALO MEDICAL RESIDENTS

General Considerations

The H-1B category is designed for temporary workers who hold advanced degrees and are employed in specialty occupations. In order to qualify for an H-1B visa, an individual must possess a Bachelor's degree or higher, and receive a job offer from the employer. The position must require the use of the degree and must be a professional or a specialized position.

H-1B petitions are filed by an employer, not the employee. Moreover, these petitions are "employer-specific;" therefore, if the individual changes employment, a new petition must be submitted to the U.S. Citizenship and Immigration Services (USCIS). Additionally, if an individual will work for more than one employer, separate concurrent petitions must be filed with the USCIS.

An individual can remain in H-1B status for a maximum of six (6) years. The initial H-1B can be for up to three years; (an) extension/s must be requested thereafter.

Unlike other types of non-immigrant status, H-1B dependents (spouses and children in H-4 status) are not permitted to work.

Processing Information

The H-1B petition involves three stages: 1) a prevailing wage application to the New York State Department of Labor (NYS DOL), 2) a Labor Condition Application to the U.S. Department of Labor, and 3) an H-1B petition to the U.S. Citizenship and Immigration Services. Generally, processing by the New York State and the U.S. Departments of Labor (DOL), and the USCIS takes 4-6 months.

The H-1B process begins with an application to the New York State Department of Labor, where a prevailing wage determination is made with respect to the minimum wage the individual should be offered as compensation for the position. A prevailing wage determination from the NYS DOL generally takes two to three weeks, but can take longer.

The second step is to submit a Labor Condition Application (LCA) to the U.S. DOL. Certification generally takes one to two days. Once the approved LCA is received, it is attached to the H-1B petition, which is filed with the USCIS.

The H-1B petition may remain pending with the USCIS for a period of three to four months or longer. The receipt notice from the USCIS will indicate a processing time of 30-120 days. As these forms are standard, they do not accurately report current processing times. Please note that individuals from certain countries may experience longer processing times because of 9/11/01-related background checks.

There is a method of expediting petitions with the USCIS called “premium processing.” For an additional fee of \$1,000, the USCIS will review – but not necessarily approve – the H-1B petition within 15 days of its receipt of a premium processing request.

Applying for a Change of Status if Already in the United States

Individuals currently in the United States in another visa status* may apply for a change of status to H-1B without leaving the U.S. This is done at the same time that the H-1B petition is filed. If a change of status to H-1B is granted, a new I-94 form will be issued by the USCIS. The I-94 form is a small white card stapled to the passport. The new I-94 form reflecting the change of status to H-1B will be part of the H-1B approval notice.

On the residents' first day of orientation, the medical resident will be required to provide his/her I-94 form to the Office of Graduate Medical Education of the University at Buffalo so that the Employment Verification form (I-9) may be completed. The medical resident will not be able to work until s/he completes the necessary paperwork and provides the I-94 card.

** Individuals currently in J status may only change status to H-1B if they are not subject to the two-year home residency requirement or if this restriction has been waived. A waiver may be pursued on the following grounds: statement of no objection from home country, interest of a U.S. government agency, fear of persecution upon return home, extreme hardship to a U.S. citizen spouse or child. ECFMG sponsored J-1 status-holders may NOT obtain a waiver of the two-year home residency requirement through a statement of no objection from their home country.*

Applying for a Visa if Outside the United States

If the medical resident is outside the U.S. when the H-1B petition is processed, s/he must identify a U.S. Embassy or Consulate at which s/he will apply for a visa. If the medical resident is a Canadian citizen, a visa issued by a U.S. Embassy or Consulate is not required. Instead, the medical resident will have to designate a Port of Entry at which s/he will apply for entry to the U.S.

Upon receipt of the H-1B approval notice, UB Immigration Services will send the medical resident the H-1B approval notice with instructions to obtain a visa appointment at the selected U.S. Embassy or Consulate (if the individual is visa-exempt, the individual will be instructed to present the approval notice at the selected Port of Entry).

The medical resident will need to show the immigration officer at the airport or Port of Entry the passport with the H-1B visa stamp (if required) and the H-1B approval notice. An I-94 Form (small white card stapled to the passport) will be issued.

On the residents' first day of orientation, the medical resident will be required to provide his/her I-94 form to the Office of Graduate Medical Education of the University at Buffalo, so that the Employment Verification form (I-9) may be completed. The medical resident will not be able to work until he/she completes the necessary paperwork and provides the I-94 card.

Extensions

The maximum amount of time that an individual can remain in H-1B status is six (6) years. If the initial grant of H-1B status was for three years, then no more than three years can be requested.

The steps involved in filing for an extension of H-1B status are the same as those involving new petitions. However, there is one major difference if an individual already has H-1B status. In this case, employment can continue while an extension of H-1B status is pending with the USCIS. As long as the H-1B extension petition was received by the USCIS prior to the expiration of the current H-1B approval notice, the individual may remain on the employer's payroll for up to 240 days after the expiration of the individual's current H-1B status.

USCIS Filing Fees

The following filing fees* must accompany H-1B petitions. **All filing fee checks should be made out to "University Medical Resident Services, PC."**

- \$1,000 for premium processing (if desired) **AND**
- \$300 for dependents who are already in the U.S. (\$300 regardless of the number of dependents.)

* In addition, the \$320 H-1B filing fee and \$500 Fraud & Detection Fee must accompany all initial H-1B petitions. These fees must be paid by University Medical Resident Services, PC.

Legal Services Fees

The following legal fees must be paid to University Medical Resident Services, PC:

- \$1,200 for processing of an initial H-1B petition **AND**
- \$200 for dependents who are already in the U.S. (if appropriate)

These fees recover some of the costs of evaluating, preparing, submitting and monitoring the progress of H-1B petitions with the New York State and U.S. Departments of Labor, and the U.S. Citizenship and Immigration Services.