



**University at Buffalo**  
*The State University of New York*

**Office of International Education**  
Immigration Services

## **H-1B TEMPORARY WORKER STATUS**

### 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 University. The position must require the use of the degree and 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 H-1B petitions for each employer 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.

There is a limit ("cap" or quota) on the number of H-1B visas available in a given year. Although universities are no longer subject to the "cap", for-profit employers continue to be subject to the H-1B cap.

### Processing Information

The H-1B petition involves three stages: 1) a prevailing wage application to the New York State Department of Labor, 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 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 for expediting petitions with the USCIS called “premium processing.” For an additional fee of \$1,000, the USCIS will review the H-1B petition within 15 days of its receipt of a premium processing request.

### USCIS Filing Fees

The following filing fees must accompany H-1B petitions. **All filing fee checks should be drawn on a bank or other institution located in the U.S. and made out to the “U.S. Citizenship & Immigration Services.”**

- \$320 USCIS filing fee **AND**
- \$500 Fraud Prevention and Detection fee **AND**
- \$1,000 for premium processing, if desired
- \$300 for dependents who are already in the U.S. (\$300 regardless of the number of dependents)

**Note: The \$500 Fraud Prevention and Detection fee must be paid by the employer and, therefore, must be drawn on an employer check. The USCIS will not accept personal checks for this fee.**

### Legal Services Fees

For individuals who will be employed at the University at Buffalo, the following charges will be invoiced to the department or individual requesting the H-1B status:

- \$1,200 for initial H-1B petition **AND**
- \$200 for dependents who are already in the U.S.

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. Immigration and Citizenship Services.