General Provisions

The Immigration Act of 1990 revised the definition and filing procedures for H-1B Temporary Worker. Under the new law, H-1B status is designated for aliens employed in "specialty occupations," which require highly specialized knowledge and a bachelor’s degree or its equivalent.

Labor Condition Application

The most significant change in the law is a labor condition application (LCA) requirement. Before employers can file an H-1B petition with the Immigration and Naturalization Service, they must first obtain an approved LCA from the Department of Labor (DOL).

Return Transportation Expenses

Employers who prematurely dismiss an H-1B alien must pay the "reasonable costs" of the alien's return transportation abroad. The employer must pay the alien's way back to his or her last place of residence outside the U.S., not just to Canada or Mexico. If the alien terminates his or her employment, he or she is not considered to be dismissed, and therefore the employer is not responsible for return costs.

Validity Periods

Generally, H-1B status is valid for a maximum of six years. An initial request for H-1B status may not exceed three years. However, if the employment terminates prior to the H-1B expiration date, the H-1B status is no longer valid. If new employment is offered, an amended H-1B petition must be submitted to the USCIS. Consult the ISSS immediately if employment is terminated prior to the H-1B validity dates.

When to File

The labor condition application must be completed before filing for H-1B status. Petitions for H-1B status may be filed no sooner than 6 months before the intended employment begins.

FILING INSTRUCTIONS

Temporary Services in a Specialty Occupation

A specialty occupation is one which requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires completion of a
specific course of education culminating in a baccalaureate degree in the specific occupational specialty.

Clinical Activities

Foreign medical graduates may be involved in clinical activities while in H-IB status if each of the following conditions can be met:

1. The individual has passed (a) the Federation Licensing Examination (FLEX), (b) Steps 1, 2, and 3 of the U. S. Medical Licensing Examination (USMLE), or (c) Parts I, II and III of the National Board of Medical Examiners (NBME) certifying examinations.

2. The individual is competent in oral and written English, as evidenced by passing the English proficiency test given by the ECFMG.

3. The individual has a license or other authorization required by the state of intended employment to practice medicine.

4. The individual has a full and unrestricted license to practice medicine in a foreign state.

Documentation must be provided to support each of the criteria listed above. Documentation in a foreign language must be accompanied by an English translation which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Required Documentation

1) an approved labor condition application from the Department of Labor
2) completed Form I-129 (prepared by the ISSS)
3) evidence the alien has the required degree by submitting either:
   a) a copy of the person's U. S. baccalaureate or higher degree which is required by the specialty occupation,
   b) a copy of a foreign degree, translation, and evidence it is equivalent to the U. S. degree, or
   c) education and experience that is equivalent to the required U. S. degree; go to Lisano International Web page at www.Lisano-INTL.com to download application forms for credentials evaluation. Process a document evaluation for INS purposes for the fee of $75.00
4) a copy of any required license or other official permission to practice the occupation in the state of intended employment;
5) letter from the department/division head containing the following information:
   a) state purpose of the letter-request H-IB status for temporary employment;
   b) provide background information on UAB; describe the proposed employment, including duties to be performed, minimum requirements for filling the position, title and salary, exact dates of employment (beginning and end)
   c) describe the applicant’s qualifications for filling the position
d) include a statement that the employer will pay the reasonable cost of return transportation if the alien is dismissed before the end of the period of authorized employment, and
e) a statement that the employer will fully comply with the terms of the approved labor condition application

6) a copy of any written contract between the employer and the alien or a summary of the terms of the oral agreement under which the alien will be employed (optional, not required)

If the alien is currently in the U. S. and applying for a change of status additional information is required:

1) Form I-539 Application for Extension of Stay/Change of Nonimmigrant Status;
2) I-94 card (and cards of any accompanying dependents); and
3) copies of previous nonimmigrant status (e.g., DS-2019's, I-20's), passport pages, and . waiver, if applicable.

**Filing Fee**

Filing fees are payable to the “Department of Homeland Security” (DHS)

Form I-129 $320.00 (normal processing time is 2 months)
Form I-539 $300.00
Form I-907 $1000.00 (premium processing option, guarantees 15 day response from USCIS)

**LABOR CONDITION APPLICATION PROCESS**

An employer seeking to employ an alien in a specialty occupation on an H-1B visa is required to file a labor condition application (LCA) with the Department of Labor (DOL) before the US. Citizenship and Immigration Service (USCIS) may approve an H-1B petition. The LCA or Form ETA 9035 must be filed with the regional office of the Employment and Training Administration having jurisdiction over the State in which the position is located. The employer is required to attest that:

1) it will pay H-1B nonimmigrants no less than the greater of the prevailing wage or actual wage for the occupation;
2) it will provide working conditions that will not adversely affect the working conditions of U. S. workers similarly employed;
3) there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;
4) it has publicly notified the bargaining representative of its employees in the occupational classification at the place of employment of its intent to employ an H-1B nonimmigrant,
or, if there is no bargaining representative, that it has posted such notice at the place of employment.

**Required Documentation**

A copy of each labor condition application and accompanying documents must be made available for public examination at the employer’s place of business or place of employment. The employer is required to develop and maintain supporting documentation regarding the actual wage, the prevailing wage, and the required notice to employees. This information must be maintained for a period of one year beyond the end of the period of employment specified on the labor condition application. Payroll records must be maintained for three years from the date of the record.

I) Documentation which provides the wage rate to be paid the H-IB nonimmigrant and a description of the system that the employer used to set the "actual wage;"

2) A copy of the documentation the employer used to establish the "prevailing wage" for the occupation - e.g., a copy of the State Employment Service Agency (SESA) wage determination; and

3) A copy of the posted notice.

**Penalties**

The Department of Labor’s review of a labor condition application is limited to determining whether it is complete and contains no obvious inaccuracies. An investigation of an employer will only occur if a complaint is received from an aggrieved party about an employer’s failure to meet a specific condition or misrepresentation of a material fact in the application.

If a complaint is filed and the employer fails to meet the applicable standard regarding wages, working conditions, notification of bargaining representatives or employees, or misrepresentation of a material fact in the application, it may result in the following administrative remedies:

1) civil money penalties not to exceed $1,000 per violation;
2) employers being barred from filing applications or attestations for at least one year; or
3) employers being ordered to provide payment of back wages.