

OVERVIEW OF H-1B STATUS

Non-Immigrant Worker in a Specialty Occupation

8CFR sections 214.2(h) and
Section 101(a)(15)(H)(I)(b) of the Act

Definition of H-1B Status

H-1B temporary workers are defined under current immigration law as aliens of specialty occupations. Specialty occupations are those that require highly specialized knowledge and a bachelor's degree or its equivalent. The employer is required to file a labor condition application (LCA) with the U.S. Department of Labor (DOL) before H-1B status or visa can be requested. Petitions for H-1B can be filed for up to 3 years and renewed for additional time as long as the total period of stay in H-1B status does not exceed 6 years.

H-1B status can be used to bring temporary faculty members, researchers, consultants or people engaged in a variety of professional-level activities to the United States. The spouse and unmarried minor children of an H-1B worker are granted H-4 status. Applications for H-4 classification are sometimes included in the petition for the principal "H" worker. Dependents in H-4 status may not be employed. The H-1B classification may be obtained while the prospective employee is in the U.S. or outside the U.S.

Process of Obtaining H-1B Status (Coordinated through OISS and processed by outside legal counsel)

1. The Prevailing Wage Information Form, should be returned immediately (see checklist). This will allow our outside legal counsel to obtain prevailing wage information.
2. If the salary being offered to the H-1B employee meets DOL wage requirements, then the Labor Condition Application (LCA) is submitted to the DOL. This process is to certify to the DOL that foreign nationals are not being hired to undercut the U.S. labor market. The DOL requires certification that 1) foreign workers will be paid the prevailing or actual wage for the position, whichever is higher, 2) the hiring of foreign nationals will not have a negative impact on U.S. workers, 3) there is no strike at the site of employment, and 4) that this information has been posted at the workplace for 10 business days. It also requires the employer to "record" how these certifications have been met. If the employer willfully violates the LCA requirements, financial penalties and revocation of the right to employ foreign workers may be the consequences.
3. Once an approved labor condition application is received from DOL, a petition for H-1B classification is filed with U.S. Citizenship and Immigration Services (USCIS). The department is responsible for collecting all supporting documents for the H-1B petition from the prospective H-1B employee.

The total processing time is three to five months, including approximately one month for the LCA. USCIS will notify UNO using form I-797 *Approval Notice*. In some cases, the University or the beneficiary may be able to request expedited processing for an additional \$1225 fee. If the beneficiary currently holds H status for another employer, she or he may be able to begin working for UNO after we have received the receipt notice and prior to the approval of the H petition.

Export Control Compliance

As of February 2011, USCIS requires employers of H-1B and certain other foreign workers to comply with the U.S. Department of Commerce's "deemed export" rules. Deemed export rules govern the release or transfer of technology, technical data, or know-how to a foreign national in the U.S. Transfer or release of technology is controlled based on the foreign national's home country and the nature of the technology. Where a foreign employee's job requires use of controlled technology, the employer must obtain a U.S. government export license or other approval before the foreign employee can be given access to the technology.

The employing department must review the Export Control Information, complete the Deemed Exports Screening Tool and Deemed Exports Attestation form and submit them to OISS along with the H-1B application materials. If an export license is required for an employee, it must be obtained before we may apply for the H-1B.

Outside Legal Counsel

The University of New Orleans has contracted with outside legal counsel to assist with matters related to employment of aliens. All processes and communication between employing departments and outside legal counsel flow through OISS.

Obligations of the Employer (department)

The employing department must comply with the labor condition application requirements as outlined above. Also the department must employ the foreign national through the end date of the period of time requested on the H-1B petition. If employment is terminated by

UNO before the end validity date, the department is responsible for the return travel of the foreign employee. In general the department should notify OISS immediately of any changes in the work duties and work location of the H-1B employee. The department should request an extension of H-1B status no later than 6 months prior to the end date on the *I-797 Approval Notice*.

The employing department must also comply with deemed export requirements outlined above, including maintenance of export licenses, if required.

Please contact OISS with any questions regarding immigration matters.

Travel and Tax Obligations

1. All H-1B employees should contact OISS well in advance of any travel outside the U.S. OISS staff will inspect travel documents and provide supporting documentation to apply for a visa (if necessary) and to facilitate re-entry to the U.S.
2. "H" workers are subject to social security employment and federal income taxes, unless tax exemption is specifically provided by a treaty or convention. All "H" workers are required to complete federal tax forms with the International Tax Coordinator.

Costs

Form I-129 for H-1B petition	Department	\$325.00
Form I-129 Anti-fraud Fee (for petitions new to UNO)	Department	\$500.00
Form I-907 for Premium Processing (if requested)	Department or Beneficiary	\$1,225.00
Form I-539 for dependents who are <u>currently</u> in the U.S.	Beneficiary	\$290.00
Legal fees	UNO	\$500-750.00

If the grant funds will be used for petition fees, it is up to the department to provide documentation that this is allowed under the terms of the grant.