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H-1B STATUS FOR PROFESSIONALS

A TEMPORARY NON IMMIGRANT WORK VISA

The H-1B nonimmigrant visa may be used to bring a worker temporarily to the United States if the employee will work in a “specialty occupation” or a professional position. The Immigration Act of 1990 made significant changes in the employer’s obligations with respect to obtaining the H-1B visa: the forms used to apply for the visa: and the application procedures. Be sure to consult with an attorney experienced in immigration matters to be certain that this is the appropriate visa category for your purposes.

What Does the Employer Do?

Qualify as a U.S. Employer.

The employer must have a U.S. taxpayer identification number. Foreign businesses not established in the U.S. cannot use this visa to bring employees here.

Obtain an Approved Labor Condition Application.

The employer must prepare and file a Labor Condition Application (LCA) with the Regional Office of the Department of Labor (DOL). The LCA is a form which must be carefully prepared and posted in two conspicuous places at the work site. The form requires the employer to state the job title, location and offered salary. The LCA also requires the employer to attest to complex facts concerning the wage, working conditions, labor conditions and the giving of notice.

Once the LCA is approved, the employer files a petition with U.S. Citizenship & Immigration Service (USCIS). The employer must document that the position requires the services of a person in a “specialty occupation.” This means a person who is working in a professional position and who has a minimum of a bachelor’s degree or its equivalent. Note that employees may show a combination of education and employment experience, or twelve years of employment experience alone to qualify for the H-1B. In such cases, an independent education and/or experience evaluation must be obtained prior to filing the petition.

What Are the Employer’s Obligations?

Completing the LCA is just the beginning. The employer must also maintain wage and hour records, as well as information concerning working conditions for all similarly situated employees. Upon request, these records must be provided to DOL’s Wage and Hour Division.

If an employer does not document the wage, pay the required wage or maintain the required records, the employer could be liable for substantial penalties including back pay and fines. The employer could even lose the right to apply for H-1B visas as well as all other immigrant and nonimmigrant visas for up to one year.

If the employer terminates the services of the employee prior to the expiration of the H-1B visa, the employer is responsible for paying for the employee's return transportation to his or her last foreign residence.

What are the Employee's Obligations?

The employees must prove that he or she is qualified for the specialty occupation and the specific job offered by the employer. The employee must be able to show that his or her foreign university degree is the equivalent to a U.S. degree by obtaining a credential evaluation of his or her education or obtain an education and experience evaluation showing the equivalent to a U.S. Bachelor's degree.

If the worker is in the U.S. and currently holds a valid nonimmigrant status, he or she may, in some circumstances, apply for a change of status to H-1B. For example, if he or she is in lawful student status (F-1), the worker may seek a change from F-1 to H-1B. This change only gives the person the ability to work in the U.S. for the sponsoring employer. If the worker needs to travel abroad, he or she will need to apply for an H-1B visa at a U.S. Consulate abroad in Canada, Mexico or their own home country. Workers not in lawful status in the U.S. or those residing abroad apply for an H-1B visa at a U.S. Consulate prior to entering the U.S to begin work.

How Long Can the H-1B Employee Remain in the U.S.?

The H-1B is a temporary visa with specific limitations on periods of stay in the United States. The initial petition may be approved for up to three years. After the initial three year period, H-1B status may be extended for an additional three year period.

After six years, the worker must spend one year outside the United States before he or she is entitled to re-enter in H-1B status. However, if the H-1B worker begins the Permanent Residence process prior to the fifth year anniversary in H-1B status, the H-1B status may be continuously extended in one year increments irrespective of the six year cap until a decision is made on the Application for Permanent Residence.

The H-1B employee's spouse and unmarried children under 21 years old may be granted H-4 status. An H-4 visa holder is not permitted to work in the United States. However, an individual in H-4 status may attend school.



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H-1B QUESTIONNAIRE: EMPLOYER

INFORMATION ABOUT THE EMPLOYER

Employer's Name: _____

Address: _____

Prospective Employee Name: _____

Address where employee will work (if different):

Tel #: _____ Year business established _____

IRS Employer I.D. Number: _____

Description of employer's business:

Nature of business: _____

Number of employees: _____

Gross annual income: _____

Net annual income: _____

Job Title: _____

Number of employees the beneficiary will supervise: _____

Title of Person supervising beneficiary: _____

Requested employment start date: _____

Wages per week/per year: _____

Is this a full time position? _____

If no, hours per week: _____

Name and title of person signing the Petition on behalf of the employer:

DOCUMENTATION REQUIRED (Please forward via E-Mail):

- 1) Detailed description of the job duties of this position.
- 2) If your company does not have a website, please forward material about the employer and the products or services that it distributes to the public, including company financial product literature and other promotional material.

Date questionnaire completed: _____



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QUESTIONNAIRE FOR H-1B STATUS: EMPLOYEE

Please return this completed questionnaire together with the following documentation:

- Clear copies of the identity page of you and your dependent family members passports and any U.S. visas and Form I-94 if currently in the U.S.;
- Government Approval and other Notices from prior F-1 H-1B/L-1 or other U.S. status;
- An updated copy of your resume with detailed descriptions of prior positions;
- Copy of educational credentials including diploma and transcripts, education evaluation and certified translations, if applicable.

BIOGRAPHIC AND FAMILY INFORMATION

Name: **Last** **First** **Middle**

Other names used: (all past & present names including maiden name, if applicable)

Date of birth (MM/DD/YYYY): **City/Country of birth:**

U.S. Social Security Number: **Sex (Male/Female):** **Marital Status:**

U.S. address if known:

Home address outside of the U.S.:

Email Address:

Telephone Number:

Dates of prior periods of stay in the U.S. for the past 6 years and type(s) of visa:

**To
Mo/Day/Yr**

**From
Mo/Day/Yr**

Type of Visa

EDUCATION:

**Name of Institution
Or University**

Field of Study

**Degree or Certif.
Awarded**

Date

OTHER INFORMATION

Has the employer, or anyone else, filed an application for permanent labor certification on the individual's behalf?

Has the employer, or anyone else, ever filed an immigrant visa petition on the individual's behalf? If so, please provide copies of all USCIS Receipt Notices.

Has the individual ever had any problem with U.S. Immigration and Naturalization Services or a U.S. Embassy or Consulate abroad?