

## H1 B VISA OVERVIEW

H1B temporary workers are defined as persons who will perform services in specialty occupations on a temporary basis. The Immigration Act of 1990 defines specialty occupation as: "an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation." To qualify as a "specialty occupation" the position must meet the following requirements. All five criteria must be met:

1. A baccalaureate or higher degree (or its equivalent) is normally the minimum requirement for entry into the particular profession.
2. The degree requirement is common to the industry.
3. The employer must normally require a degree or its equivalent for the position.
4. The job duties must be "so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree."
5. The position's level of responsibility and authority must be "commensurate with professional standing." The H1B status can be used to bring temporary faculty members, researchers, consultants, administrators, or individuals engaged in a variety of professional-level activities to the United States.

To qualify for H1B status, the alien must possess the required degree or its equivalent or possess a certificate or license that permits the alien to immediately practice the profession in the state of intended employment. The H1B is employer specific; *the employee may only work for the employer who filed the H1B petition and can only perform the job included in the petition.*

### **Temporary Employment:**

The H1B is a temporary visa. The alien must be coming to temporarily fill a position that may, or may not in itself be temporary. The employer must attest that the alien's services are needed temporarily. The letter of appointment and other documents must stipulate the temporary nature of the appointment.

### **Obtaining the H1B for Employment:**

The H1B process takes at least six months prior to the requested H1B employment date. US Citizenship and Immigration Services (\*USCIS) determines eligibility status, not SU or the HRO of SU. After determining that the person qualifies for H1B status, the employer must obtain the Labor Conditions Application (LCA). Once the certified LCA is received, the H1B petition will be filed. The petition must show that the foreign national is entering the United States or changing to H1B status for the purpose of temporary employment. The petition must be accompanied by supporting documents such as degrees or academic records, licenses to practice a profession, and letters and other documents attesting to the alien's qualifications.

USCIS has instituted a Premium Processing Service in which they will adjudicate a complete petition within 15 calendar days of receipt; the processing fee is \$1,000 (separate check required).

### **Period of Stay:**

An H1B may be initially issued for a minimum period of one (1) year or for three (3) years. Extensions may be obtained, but the total period of authorized stay cannot exceed six (6) years, unless the individual has progressed through the requisite steps leading toward permanent residency.

If the employer dismisses the alien prior to the expiration of the authorized stay, the employer is liable for the reasonable cost of return transportation for the alien abroad.

### **Legal Penalties:**

By signing the Request Form the employer (HRO) is attesting to the accuracy of the information that is on the form and supporting documents. To knowingly furnish any false information; conceal or cover up information; make any false, fictitious or fraudulent statements or representations, or make or use any false writing or document in the preparation of a U.S. government document, or to aid, abet, or counsel another to do so is a felony, punishable by a \$10,000 fine or five years in the penitentiary, or both.

### **Transferring Employers:**

Due to the new portability provisions of Public Law 106-313 (Title I), Section 105, it is possible to "transfer" H1B status to another employer based on the timely filing of a petition for new employment by that sponsoring employer. A request to transfer H1B status will still require attorney assistance.

\* The USCIS also referred to as Immigration or INS is a branch of the US Department of Homeland Security.

### **Tips and Reminders:**

#### OVERVIEW OF STEPS

Employment offers are to be a minimum one year appointment. Preference for hiring foreign aliens due to the VISA costs, preparations, etc. is for full-time tenure track positions.

- ❑ **Prior to an offer agreement being sent to a foreign national, the agreement should contain language that:**
- ❑ **Stipulates the cost of the attorney fees for processing is covered by the University (\$1,800) for the candidate only (not for family members);**
- ❑ **The USCIS petition fee (\$190.00) is to be paid by the incumbent.**
- ❑ **In signing the employment agreement, the candidate agrees to comply and be timely with any documents that are requested by the University, immigration attorney or USCIS.**

- ❑ Upon signing of the agreement the hiring department notifies the Human Resources (HR) Department and forwards a copy of the agreement with all pertinent contact information to HR.
- ❑ The hiring department will need to provide HR with full contact information of the incumbent (i.e. name, address, phone number, email address).
- ❑ Once HR receives a copy of the signed agreement and candidate information, they will contact the immigration attorney to begin work on the petition and VISA processing requirements.
- ❑ The attorney will contact the candidate and begins the necessary interview to acquire, review, organize and prepare documents necessary to supplement the petition to the USCIS.
- ❑ Attorney prepares petition for Non-Immigrant Worker, forms (e.g. I-129, H Supplement and W Supplement) and applications pertaining to the employee.
- ❑ Attorney has the Director of Human Resources complete the Employer questionnaire for the University.
- ❑ Attorney and Director of Human Resources work jointly on preparing and completing the prevailing wage request.
- ❑ H1 Petition order must be posted for 10 days on University/HR bulletin board.
- ❑ Attorney prepares petition letter for review and signature by Director of Human Resources.
- ❑ Submits all documentation to the Director of HR for review and signature.
- ❑ Upon completion of entire package, attorney submits to Homeland Security.
- ❑ Copy of package is sent to employee and the University.
- ❑ Attorney is responsible for any and all follow-up work required on the package including but not limited to supplementing the application should Homeland Security require additional information.

The estimated timeframe from the time the attorney receives the required documentation from the employee to the submission to USCIS and final USCIS decision, is approximately 6 months. This timeframe assumes that the candidate is prompt in providing all of the required documentation to the attorney.

In the event that the VISA work has not been finalized prior to the start date of the incoming faculty member, it will require the hiring department to pay to the USCIS a premium-processing fee of \$1,000.00. The premium- processing fee expedites the USCIS to approve the VISA within a 15 day period.

**FEEES ASSOCIATED WITH THE H 1(b) PETITION \* Other fees may apply.**

I-129 Petition	\$190.00	Paid by the candidate
Attorney flat rate	\$1,800.00	
<b>Expedited Processing</b>	<b>\$1,000.00</b>	<b>Charged to the hiring department</b>

**Attorney retained by SU:**

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**From the Human Resources Office 8/06**