



Procedure HR-E-PR32 Hiring Temporary Nonimmigrants

Dates Effective: From: April 9, 2020

Responsible Officer: Vice President for Human Resources

Sponsoring Department: Department of Human Resources

Errors or changes to: Office of Legal Affairs

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Objective

The purpose of this policy is to:

Identify those positions which The University of Texas at Arlington (UTA) will consider for H-1B sponsorship.

Establish the procedures for requesting, obtaining approval for, and processing an H-1B petition, and provide reference forms for departments and foreign nationals to utilize in relation to the process.

Establish immigration procedures in compliance with state and federal laws as well as related institutional policies and procedures.

Scope

This information is for UTA hiring departments who are interested in hiring a foreign national. When hiring a foreign national, the University must sponsor the individual for a temporary nonimmigrant worker visa, known as the H-1B visa. This policy also provides information about the legal requirements set forth by the U.S. Department of Homeland Security, the U.S. Department of Labor, and the Texas Workforce Commission related to processing an H-1B petition.

Procedures

Positions That will be Considered for Sponsorship

The majority of positions which the University will fill with foreign nationals fall into the H-1B "specialty occupation" category, which is the focus of this procedure.

Specialty Occupations

An H-1B visa is available for a "person in a specialty occupation" who is coming temporarily to the U.S. **"A specialty occupation" for H-1B purposes is an occupation that requires:**

- Theoretical and practical application of a body of highly specialized knowledge, and
- Attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The University will **not** sponsor individuals for an H-1B visa if the position does not require a minimum of a bachelor's degree (equivalent experience is not acceptable for the purposes of university sponsorship) and satisfy the above requirements for a "specialty occupation." A foreign national's qualifications are irrelevant when evaluating whether a position qualifies for a "specialty occupation."

UTA normally does not provide H-1B visa sponsorship for administrative positions except where a position requires highly-specialized skills and the University has not been able to find qualified U.S. workers with those skills, (most often faculty positions). Please note that attorneys representing individuals are not authorized to file H-1B petitions on behalf of the University.

The individual **cannot** begin to work until the H-1B petition is approved, as evidenced by a hard-copy of the H-1B approval notice. An e-mail notification of approval is not sufficient evidence to permit the foreign national to begin work. Filing of the petition does not authorize a foreign national to begin employment. There are certain exceptions to this rule available for those extending H-1B status or those changing employers, which are addressed below. Otherwise, departments **MUST NOT** permit a foreign national to begin employment until the H-1B petition has been approved and received by the International Employment Coordinator.



General Information about H-1B Visa Availability

UTA, as a non-profit higher education institution, is cap-exempt and not subject to the U.S. government's cap on H-1B visas.

Part-time H-1Bs

Part-time H-1Bs are not permitted under UTA policy. The Department of Labor requires a strict record-keeping of all part time hours worked, which makes these H-1Bs more difficult to keep up with in terms of compliance. Please consult with the International Employment Coordinator to discuss exceptions to this policy. Cases that merit further discussion will be referred to the Executive Director of Human Resources, and/or the Vice President for Human Resources.

Changes of Status to H-1B

For individuals already in the U.S. in another immigration status (i.e. F-1/OPT, J-1, O-1, TN, H4), the individual must still petition for H-1B status. In order to change status within the U.S., a nonimmigrant must be maintaining their current legal status. The University will not sponsor an individual for H-1B status who has not properly maintained legal status in the U.S.

J-1/J-2 Immigration Status

If the nonimmigrant is in J status and is subject to the 212(e) 2-year home residence requirement (or ever was in the past), he/she cannot change to H-1B status until this requirement is either fulfilled or waived. If waived by the Department of State, an official waiver letter must accompany the petition when the case is sent to USCIS. Please contact the International Employment Coordinator for more information.

Non-Transferability of H-1B Status

Work authorization is employer specific. The H-1B status which has been obtained on behalf of an employee may not be used by any other employer. An additional H-1B would need to be approved for a second employer. While a person may hold more than one H-1B classification, he/she is only permitted to work for the approved employer(s). There is a portability provision which allows a current H-1B worker, who is changing employment to UTA and thus filing a new H-1B petition, to begin working here as soon as confirmation is received that USCIS has received the petition, rather than waiting for the new petition to be approved.

Extensions of H-1B Status

H-1B extension procedures are basically the same as the initial H-1B. Therefore, the initiation form and entire procedure must again be completed by the department and the employee, and submitted to the International Employment Coordinator with all supporting documentation. **It is important to request the extension as soon as possible.** H-1B extensions fall under a special "240-day rule": *"An H-1B alien for whom the employer has filed a timely application for an extension of H1B stay can continue employment for the same employer while the request for extension of stay is pending with USCIS, for a period of up to 240 days beyond the expiration of the prior period of authorized stay."* This rule only applies when the H-1B extension petition has been filed before the current H-1B visa expires- if the petition is not timely filed, the individual cannot continue to work beyond the expiration of his/her current visa.

Length of H-1B Visa

H-1B status may be requested for an initial period of stay up to 3 years. The length of the H-1B visa is a decision made by the employing department. The University encourages departments to request 3 years if funding is available, to avoid having to undergo the extension process, which incurs additional fees. However, the International Employment Coordinator will only request the H-1B visa for the duration of the position as indicated by the Employing Department.

Beyond the initial 3 year period, extensions of H-1B visas are available for up to another 3 year increment; the cumulative duration of an H-1B classification is 6 years. Unless the individual is subject to other circumstances (such as pending green card petition/adjustment of status to a permanent resident), the H-1B visa cannot be extended beyond 6 years. If the 6 years have been used, the individual must remain outside the U.S. for a period of one year before the six-year clock can begin again

Fees

The employing department is responsible for all fees associated with the H-1B petition. This could include a filing fee, fraud prevention fee, potential premium processing fee, mailing fees, overseas consular processing fee, and should outside legal counsel be necessary, the employing department will also be responsible for any legal fees associated with the petition. For current fee amounts, consult the International Employment Coordinator.

Any costs associated with the filing of H-4 dependent petitions should be paid by the beneficiary; the University has no obligation for these fees.

Return Transportation



If the employee is dismissed before the end of the authorized period of H-1B employment, the sponsoring department will be responsible for paying the reasonable costs of return transportation to the employee's home country. This is required by United States Citizenship and Immigration Services (USCIS) regulations, to ensure that the foreign national will not be stranded in the U.S. without being able to return to his/her home country

Process for Obtaining Approval for UTA H1B Sponsorship

Initiation by the Employing Department and Review of the Request

The employing department seeking to sponsor the foreign national must submit a Request to Initiate H-1B Form HR-E-F20) signed by the chair and the dean. The foreign national employee may not initiate the request. The request is then submitted to the International Employment Coordinator, Office of Human Resources, for review. The Executive Director of Human Resources, and/or Vice President for Human Resources review all requests for sponsoring an international employee for an H-1B visa and have the final right of decision. If the request is approved, the International Employment Coordinator will begin the H-1B petition process.

The International Employment Coordinator will also require the H-1B beneficiary (foreign national employee) to complete an H-1 Foreign Employee Questionnaire Form HR-E-F21.

Preparation of the Petition by the International Employment Coordinator, Office of Human Resources

The International Employment Coordinator will request that the employing department and the foreign national provide certain documents necessary for the H-1B petition and legal compliance. Departments should print all documents on UTA departmental letterhead. As the information reflected in all documents must be consistent, it is possible that departments will be requested to revise/update these forms. Please see checklists and forms in the Relevant UT System and UTA Policies, Procedures, and Forms section at the end of this procedure.

Once the necessary information is received, the International Employment Coordinator will complete a draft of the Labor Condition Application (LCA). If the certified LCA's listed wage is more than the wage offered by the department to the foreign national, the International Coordinator will notify the department of this and will discuss options.

Postings by Employing Department and Department of Human Resources

The International Employment Coordinator will create a posting notifying employees that the University is filing the LCA, which will be provided to the Department of Human Resources and the employing department. Both departments will post this notice in an area of sufficient visibility for other employees. The employing department must ensure that this notice is posted in the actual work area in which the foreign national will be performing his/her job duties. It is the responsibility of the employing department to inform the International Coordinator of all physical work sites of the foreign national. This notice must be posted for 10 business days, after which it must be signed and dated by a department administrator, and the original must be returned to the International Employment Coordinator, who will keep track of the 10 days.

Approval of the Labor Conditions Application (LCA) by the Department of Labor

Following the posting of the notice, the International Employment Coordinator will file the LCA and upon certification will forward it to the Executive Director, Equal Opportunity Services for signature. The International Coordinator will then confirm that all required documents have been collected for the H-1B petition and will prepare the petition to be filed with the USCIS.

Payment of Fees by the Employing Department and Beneficiary

The employing department will request that checks for all required filing costs be provided to the International Employment Coordinator and will assist the International Coordinator in arranging any certified mail/FedEx/UPS mailing services. All filing fee checks are to be separate checks made payable to U.S. Department of Homeland Security. The International Employment Coordinator will also provide departments with additional fee and mailing instructions. The employing department will also assist in ensuring that any fees that will be paid by the foreign national beneficiary are provided to the International Employment Coordinator to be sent with the petition.

Submission of the H-1B Petition by the International Employment Coordinator

The International Employment Coordinator will review the entire petition and submit the USCIS Form I-129 to the Vice President for Human Resources to review and sign. After the petition has been signed, the International Employment Coordinator will submit the petition, approved LCA and other evidentiary documents to the designated USCIS Immigration Service Center for adjudication. There is no way to accurately approximate the time it will take for H-1B approval. In addition, if the H-1B beneficiary is not in the United States, this significantly increases processing times. Generally, it takes three to six months for the petition



to be approved if it is a change of status to H-1B. If the individual has an H-1B through another employer and s/he is "porting" the H-1B to UTA, it could take up to 9 months for approval. In the latter case, as well as an H-1B extension, however, the individual is eligible to work at UTA while the case is pending with USCIS.

If the foreign national beneficiary has dependents for which s/he will be applying for H-4 status, it is recommended that this application be submitted along with the I-129 petition. The University does not prepare the H-4 petition or pay the filing fee, but it will mail all the petition materials together. The beneficiary must notify the International Employment Coordinator at the beginning of the H-1B process if the H-1B beneficiary has dependents.

***Note:** If the beneficiary is not in the U.S., a notification of an approved petition is sent directly from USCIS to the U.S. Embassy or Consulate where the beneficiary will be requesting the H-1B visa. An original H-1B approval notice (USCIS Form I-797) will be sent to the Office of Human Resources. The Office of Human Resources will mail the original H-1B approval notice along with a copy of the approved H-1B petition plus evidentiary materials to the beneficiary to use when they apply for the H-1B visa.

Maintenance of Ongoing Compliance with State and Federal Laws Related to H1B Employees

Change in H-1B Beneficiary Job Duties, Work Location, or Resignation/Termination of Employee

The Employing Department is responsible for notifying the International Employment Coordinator if the H-1B beneficiary's job duties change, if the location of employment has changed, or if the H-1B beneficiary resigns/is terminated from his/her position. A change in job duties, job location, resignation, or termination of the H-1B beneficiary creates certain legal obligations on the part of the University to amend/revise/revoke documentation which was filed pertaining to the H-1B beneficiary's status. Please note that if the University does not notify the USCIS of changes in an H-1B employee's status, the University may incur certain monetary liabilities.

Public Access File and Department of Labor File

Per Department of Labor (DOL) regulations, an employer must make certain documents filed as part of the H-1B petition available for public examination at the employer's principal place of business in the U.S. or the place of employment.



Public access means that individuals have the right to view these documents, including the Labor Conditions Application (LCA). The International Employment Coordinator will maintain the public access file for one year beyond the LCA period, and any related payroll records for 3 years from the date of creation.

Employing departments should direct any individuals interested in reviewing these documents to the Office of Human Resources, International Employment Coordinator.

In addition to the public access file, UTA is required to maintain and must make available for the inspection by the DOL other documentation related to the H-1B petition. These documents are maintained as part of the foreign national employee's immigration file, which is kept at the Office of Human Resources. Employing departments should direct any representatives of the DOL interested in reviewing these documents to the Office of Human Resources, International Employment Coordinator.

UTA Liability

Submission of an H-1B petition by UTA on behalf of a prospective employee does not guarantee that the petition will be approved. The approval of such petitions rests with U.S. government agencies--not with UTA. Every effort will be made by the Office of Human Resources to process the paperwork in as timely a manner as possible.

Disclaimer

The information contained in this procedure should not be construed as legal advice, but is intended for the general, informational use by the UTA community.

Definitions

N/A

Relevant Federal and State Statutes

INA 101(a)(15)(H)(i)(b)
8 U.S.C. 1101(a)(15)(H)(i)(b)
8 C.F.R.214(h)
22 C.F.R 41.5320 C.F.R 655

20 C.F.R.655

Relevant UT System and UTA Policies, Procedures, and Forms

[UTS157 - Automobile Insurance Coverage for Officers and Employees and General Requirements for the Use of Vehicles](#)

Request to Initiate H-1B [Form HR- E-F20](#))

H-1 Foreign Employee Questionnaire ([Form HR-E-F21](#))

Departmental Request to Initiate Legal Permanent Residency (Form HR-E-F22)

H-1B Forms and Documents

[H1 Foreign Employee Document Checklist](#)

[H-1B True Copy Statement](#)

[H-1B Actual Wage Determination](#)

[H-1B Benefits Memorandum](#)

[H-1B Salary Memorandum with Names](#)

[H-1B Salary Memorandum Without Names](#)

[H-1B No Other Jobs with Same title Memorandum](#)

[H-1B Job offer Letter](#)

Other H-1B Resources and Guidelines

[U.S. Citizenship & Immigration Services](#)

[U.S. Department of State](#)

[Foreign Affairs Manual \(FAM\)](#)

[U.S. Department of Labor Employment & Training Administration](#)



[Federal Register](#)

Contact Information

Please contact the International Employment Coordinator, Office of Human Resources, Box 19569, with any questions at 817-272- 0035 or internationalemployment@uta.edu.