

Hiring Temporary Nonimmigrants

Responsible Officer: Executive Director, EOS
Sponsoring Department: Equal Opportunity Services
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Errors or changes to: aim@uta.edu

Procedures

I. **Purpose**

The purpose of this policy is to:

- A. Identify those positions for which The University of Texas at Arlington will consider for H-1B sponsorship.
- B. Establish the procedures for requesting, obtaining approval for, and processing an H-1B petition, as well as provide forms for departments and foreign nationals to utilize in relation to the process.
- C. Establish immigration procedures in compliance with state and federal laws as well as related institutional policies and procedures.

II. **Introduction to The University of Texas at Arlington Hiring of Temporary Nonimmigrants Policy**

This information is for The University of Texas at Arlington 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 the processing an H-1B petition.

III. **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.

A. 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:**

1. Theoretical and practical application of a body of highly specialized knowledge,

2. 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.
- B. 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 as a "specialty occupation."
 - C. Please note that the general rule is that 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 Coordinator for Employment.
 - D. General Information about H-1B Visa Availability

H-1B visas generally fall into two categories: subject to cap and cap exempt. The U.S. government places a 65,000 limit, or "cap", on the number of H-1B visas which may be issued each fiscal year. This cap does not include an additional 20,000 visas per year for persons who have earned a master's or higher degree from a United States institution of higher education. As the cap applies to most employers, there is a "race" by employers to file H-1B visa petitions beginning April 1 of each year, for the October 1 start date of that fiscal year. Some employers are not subject to the H-1B visa cap, and are known as cap-exempt. The University of Texas at Arlington, as a non-profit higher education institution, is cap-exempt. However, due to the flood of H-1B petitions filed at USCIS in April of each year, processing times for *all* H-1B petitions are subject to increase.

E. Part-time H-1Bs

Part-time H-1Bs are discouraged and not permitted under UT Arlington policy. The Department of Labor requires a strict record-keeping of all part time hours worked, and this makes these H-1Bs much harder to keep up with in terms of compliance. Please consult with the International Coordinator for Employment to discuss exceptions to this policy. Cases that merit further discussion will be referred to the Director of Equal Opportunity Services, the Vice President for Human Resources, and the Provost's office.

F. 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 status. The University will not sponsor an individual for H-1B status who has not properly maintained legal status in the U.S.

G. Important Note Regarding 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 Coordinator for Employment for more information.

H. 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 UT Arlington 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.

I. 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 International Coordinator for Employment 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.

J. Length of H-1B Visa

1. 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 Coordinator for Employment will only request the H-1B visa for the duration of the position as indicated by the Employing Department.
2. 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.

K. Fees

1. The employing department is responsible for all fees associated with the H-1B petition. The maximum potential fees which may be incurred for an H-1B petition are \$2,050.

- \$325 filing fee for the H-1B petition itself, the I-129.
- \$500 fraud prevention and detection fee required for each new H-1B petition (not required for a petition extending H-1B status with the same employer)
- Miscellaneous mailing fees- FedEx, UPS, certified mail, etc.
- \$1,225 potential premium processing fee- depending on the timing of the petition, it may be necessary to fast-track the petition with the premium processing option. It is strongly urged that the department pursue premium processing of an H-1B petition if it has been filed regular processing, and the new foreign employee has not received his/her approval notice at three weeks prior to the requested employment start date.
- Miscellaneous overseas consular processing fees- if the foreign national is abroad, the department will need to pay an additional filing fee to the consulate.

2. Miscellaneous

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.

L. Return Transportation of Alien

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 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.

IV. Process for Obtaining Approval for UT Arlington H1B Sponsorship

A. Initiation by the Employing Department and Review of the Request

1. The employing department seeking to sponsor the foreign national must submit, *Request to Initiate H-1B* ([Form 22-2](#)) signed by the Chairman and the Dean. The foreign national employee may not initiate the request. The Request is then submitted to the International Coordinator

for Employment, Office of Equal Opportunity Services, for review. The International Coordinator for Employment will notify the department if the request for sponsorship will be denied and will explain the denial. If the department disagrees with the denial, it may appeal the decision to the Director of Equal Opportunity Services, the Vice President for Human Resources and/or the Provost. If the request is approved, the International Coordinator for Employment will begin the H-1B petition process.

2. The International Coordinator for Employment will also require the H-1B beneficiary (foreign national employee) to complete, *H-1 Foreign Employee Questionnaire* ([Form 22-3](#)).

B. Preparation of the Petition by the International Coordinator for Employment, Office of Equal Opportunity Services

1. The International Coordinator for Employment 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 UT Arlington 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 Related Resources section at the end of this procedure.
2. Once the necessary information is received, the International Coordinator for Employment 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.

C. Postings by Employing Department and Department of Human Resources

The International Coordinator for Employment 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 Coordinator for Employment, who will keep track of the 10 days.

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

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

E. Payment of Fees by the Employing Department and Beneficiary

The employing department will request that checks for all of the required filing costs be provided to the International Coordinator for Employment 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 Coordinator for Employment 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 Coordinator for Employment to be sent with the petition.

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

1. The International Coordinator for Employment will review the entire petition and submit the USCIS Form I-129 to the Executive Director, EOS to review and sign. After the petition has been signed, the International Coordinator for Employment 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 he is "porting" the H-1B to UT Arlington, 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 UT Arlington while the case is pending at immigration.
2. If the foreign national beneficiary has dependents for which he/she 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 of the petition materials in together. Please notify the International Coordinator for Employment 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 US 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 Equal Opportunity Services. The Office of Equal Opportunity Services 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.

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

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

The Employing Department is responsible for notifying the International Coordinator for Employment 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.

- B. Public Access File and Department of Labor File

- 1. 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 Coordinator for Employment 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 Equal Opportunity Services, International Coordinator for Employment.

- 2. In addition to the Public Access File, the employer 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 Equal Opportunity Services. Employing Departments should direct any representatives of the DOL interested in reviewing these documents to the Office of Equal Opportunity Services, International Coordinator for Employment.

- C. UT Arlington Liability

Submission of an H-1B petition by UT Arlington 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 UT Arlington. Be assured, however, that every effort will be made by the Office of Equal Opportunity Services to process the paperwork in as timely a manner as possible.

VI. **Contacts**

Please contact Clare Vega, International Coordinator for Employment, Office of Equal Opportunity Services, Box 19569, with any questions. She is available at 817-272-0035 or cvega@uta.edu.

VII. **Disclaimer**

The information contained in this procedure should not be construed as legal advice, but is intended for the general, informational use by The University of Texas at Arlington community members.

Related Resources

I. **H-1B Forms and Documents**

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

II. **H-1B Forms and Documents**

- *Request to Initiate H-1B* ([Form 22-2](#))
- *H-1 Foreign Employee Questionnaire* ([Form 22-3](#))
- [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](#)

III. **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](#)

IV. Specific H-B Status-related Statutes and Regulations

- 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