

HIRING FOREIGN NATIONALS IN H1 B STATUS

We have hired an international employee; what do we need to do about his visa?

Upon offering employment to a foreign national who is already in the United States, first, determine their immigration status, and the expiration date of that status. Then, if they need H-1B status, start assembling the paperwork required in the H-1B checklist on our website. The individual may be in the U.S in one of the following immigration status:

- F-1 status with an OPT card that allows them to work for, typically, 12 months. If they are in a STEM field, they may have an additional 2 years of employment authorization.
- J -1 exchange visitor status
- H-1B status sponsored by another employer

The H-1B Checklist and Request Form on our website is the same for all H-1B actions, including change of status to H-1B; transfers for employees who are in the US in H-1B status sponsored by another employer; consular notifications for those currently abroad; extension of status; and amendments.

What kind of position is appropriate for H-1B?

The H-1B is suitable for positions that require a bachelor's degree in a specific area of specialization, as a minimum requirement. The degree must be related to the job functions. The employee must be paid a competitive salary comparable to salaries for similarly employed American workers; and they must be offered benefits on the same level as US workers. H-1Bs should not fill gratis positions. If the employee is abroad; if they are coming to fill a more temporary position; or if their employment is short term, or gratis, the J-1 may be the appropriate status for them.

How do I compile the paperwork?

Assemble all the relevant documents listed in the checklist, in the same order as on the checklist. Answer all the questions on the Request Form. It is best to ask the employee to complete the "Employee Section" of the Request Form. If this is your first time to process H-1B documents and if you are not sure what to do, call 8-3191 (International Services) and ask for an appointment with [Ms. Loveness Schafer](#) who can walk you through the process. Make sure to get a degree evaluation if the employee's degree is not from the United States. The employee is responsible for the cost of the evaluation.

What should be the validity period of the H-1B?

The maximum period allowed in the H-1B category is 6 years. Exceptions exist in limited cases for individuals who are beneficiaries of a permanent residence application. H-1B status may be granted for a period of 3 years or less, at any given time. There is no mandated minimum period. Your department decides whether to sponsor for 3 years or less. In deciding how much H-1B time

to request, you must consider the nature of the position (whether it is a temporary or permanent position), and the availability of funding for that position. Can funding be guaranteed for 3 years? Is the department committed to employing the person for the requested H-1B time?

If the department terminates employment prior to the expiration date of the H1B, they are obligated to pay the one-way airfare for the employee to return to their home country. This is called the Return Transportation costs requirement.

The new hire is a tenure track Assistant Professor; are there special rules for tenure track positions?

We recommend that tenure track faculty members hold H-1B status. If they are in an F-1 OPT status, a change of status to H-1B should be pursued before the end of their first semester at LSU.

Always request an H-1B valid for 3 years for tenure track faculty, unless they have less than 3 years left in the H category; or unless they have been reappointed for only 1 or 2 years following their third year or tenure review. We strongly recommend that you request their H-1B effective August through August, rather than August through May, even if they are on an academic appointment. This avoids possible delays in filing for their H-1B extension, as most 3rd year reviews are done in spring and may not be completed in time for an extension petition to be timely filed.

The law does not allow tenure track faculty members to be in a J-1 status. Therefore, a J-1 scholar who is offered a tenure track position must request a change of status to H-1B immediately. A J-1 scholar who is subject to the two-year home residence requirement is not eligible for change of status, unless they have fulfilled the 2-year home residence requirement; or they have been granted a waiver of the home residence requirement, by the State Department and the US Citizenship and Immigration Services.

When should I request a change of status to H-1B for a non-faculty employee?

If they currently have an Optional Practical Training (OPT) card valid for 12 months, it is best to request change of status to H-1B in their 5th or 6th month of OPT. If they are eligible for OPT STEM, they must apply for OPT-STEM, unless we are able to grant an exception for them to transition to H-1B without first extending to OPT-STEM.

What if the new employee's current status will expire soon and we want her/him to start work as soon as possible?

Start assembling the required documents as soon as possible and submit them to International Services to the attention of Loveness Schafer. It takes about 3 weeks for International Services to prepare the petition. It takes Immigration about 3 to 8 months to adjudicate the petition. You may request Premium Processing to expedite the adjudication process (see the checklist).

Premium processing may be requested with the H-1B petition or at a later stage to upgrade a pending case.

What is the H-1B filing fee, and who is responsible for paying this fee?

See the Checklist.

What if the employee's current work authorization expires before the H-1B Petition is approved?

If the employee's current work authorization expires before the change of status to H-1B is approved (and if extension of the current work authorization is not possible), employment will have to be terminated temporarily. When the H-1B is approved and received by the International Services, then the employee may be reappointed. For additional documentation requirements, please contact HRM.

Can I request a change of status from F-1 OPT to J-1?

Change of status to J-1 is possible, but it is rare, and is generally not a good idea, unless there are no better options for the employee. There is no premium processing for applications for change of status to J-1 and USCIS processing times are long. More importantly, the J-1 is for educational and cultural exchange. The J-1 is not necessarily a work visa.

The new hire is currently outside the United States. Is the H-1B process different in this case?

Start compiling the H-1B paperwork for them as soon as possible because it will take longer for them to obtain the H-1B. When the H-1B petition is approved, you will need to mail the approval notice and other documents to them. Then they will need to get an appointment with the US Consular Office to apply for a visa so that they can travel to the United States. In some countries, it can take up to 3 weeks to get an appointment; and a week or longer for the visa to be granted. It is important to factor the visa application process when sponsoring the H-1B for someone who is abroad. You will not need to do any paperwork for their dependent spouse or dependent children. The dependents apply for H-4 visas along with the H-1B principal.

The new hire already has an H-1B. Can we employ him right away?

No. H-1B status is employer specific. If the new hire is in H-1B status filed by another employer, they cannot use that H-1B to work at LSU. A new H-1B filed by LSU is required, to transfer their H-1B to LSU. The employee should not quit the current job until LSU files the new petition. The starting date for the H1B transfer should be the day after the separation date from their current employer. The employee is eligible for employment at LSU when LSU files the new petition on the employee's behalf. They do not need to wait for the H-1B to be approved.

The H-1B employee's contract will be renewed. What do we need to do to continue his employment?

Start the H-1B extension of status process early, about 6 months ahead. USCIS must receive the petition before the current status expires. If the current H-1B expires while the extension application is still pending, they can continue employment up to 240 days. We strongly recommend starting the extension process 6 months ahead to avoid problems which may result from last minute filings.

What if there are changes in the terms of employment since the approval of an H-1B (promotion, change in duties, change in title, reduction in salary or percent effort, change in location of employment, etc.)?

The H-1B is employer and employment specific. Immediately notify International Services of any changes. A new amended petition must be filed whenever there is a major change. The employee must wait until International Services files the amended petition before the employee can move into the new amended employment. They do not have to wait for the petition to be approved. Minor changes must be reported as well for International Services to document the change.

What is the department's responsibility upon termination of employment?

Notify International Services by sending them a copy of the separation form, and a copy of the resignation letter, if any. If employment is terminated before the H-1B expires, the department must offer to pay return transportation costs (airline ticket) to the employee's home or residence abroad. In such cases (early termination) please notify International Services even before the official termination. Notify International Services when a notice of intent to separate is issued.

What are the pros and cons of H-1B?

- The employee can be in H-1B status for up to 6 years.
- H-1B status is portable (can be transferred to another employee through a filing of a new petition by the new employer).
- H-1B is more complex, time consuming and costly for the department.
- H-4 spouses and children are not allowed to work in H-4 status.