

APPLICATION PACKET FOR H1-B (TEMPORARY WORKER)

Application Process for initial H1B's and extensions of the H1B

The H-1B Temporary Worker visa allows foreign nationals to work in the United States in specialty occupations for a period of up to six years. Each application can be made for a period up to three years. The application must be filed by the employer; an individual cannot gain an H-1B on his/her own.

Department Process: Hiring Unit assembles materials for H1B application paperwork. When all materials are collected, entire application packet is submitted to the INTERNATIONAL SERVICES (*incomplete submissions will not be accepted unless specific arrangements have been negotiated – must be a special circumstance, as determined by INTERNATIONAL SERVICES*). Please note that **we cannot guarantee that the H1B petition will be approved by any specific date**. We can only provide *estimates* of the timing involved. INTERNATIONAL SERVICES recommends that application be made **six (6) months in advance of a proposed H1B start date**, but they can NOT be submitted sooner, as per DOL regulations. **Do not submit an H1B application more than 6 months before the proposed H1B start date!**

Expedited Processing Option: The fee for expedited processing is \$1440 (in addition to the \$460 filing fee), payable to USCIS. There are a few things to be aware of. First, the expedite service ONLY covers the USCIS processing time. It does not provide any mechanism for expediting a Prevailing Wage Request, or the Department of Labor's LCA. An approved LCA is required before submission of the H1B petition can be made to USCIS. Second, if USCIS decides that more information is required of us and sends a "request for evidence" (RFE), the 15-day clock begins again, once USCIS receives the requested additional evidence. Even with these limitations, the expedite service can cut filing times considerably.

Changes of Status: When the applicant is changing from another visa status (example, J-1 or F-1) to H1B he/she **MAY NOT** begin employment until the H1B approval notice has been received from USCIS. Additionally, the applicant may not travel outside the US until the H1B is approved. In some cases, applicants may wish to pay for expedited processing if immediate travel is necessary.

Extensions of Status: Applications for H1B extension have the same requirements as for new H1B petitions. With extensions of H1B status, Cornell may be able to employ the individual for 240-days while the extension case is pending with USCIS; please consult with the INTERNATIONAL SERVICES. In addition H1B workers may travel if their current H1B approval and visa are valid, while an extension is pending.

Change of H1B Employers ("portability" cases): An approved H-1B petition is not transferable between employers. If an applicant decides to change employers, he/she must begin the entire process again. However, an applicant who is already in H1B status may begin working at the new employer as soon as the new H1B application is received by USCIS. Final USCIS approval is not required for the employment to begin, but only the issuance of the USCIS receipt notice.

Important Regulations to be aware of: H1B regulations prohibit the practice known as "benching." Once the H1B applicant has arrived to begin employment, Cornell may not place that worker in unpaid/nonproductive status. Additionally, Cornell must provide return transportation to the home country for any H-1B worker terminated prematurely.

H1B Application Checklist

Cornell Department:

Primary department contact (name, phone, email):

Alternate department contact (name, phone, email):

H1B applicant's name:

Items to be completed and submitted by hiring unit/department:

1. Required USCIS Fees (separate checks required)

- ✓ \$460 filing fee*, payable to USCIS (**California Service Center, US Citizenship and Immigration Services, 24000 Avila Road, Room 2312, Laguna Niguel, CA 92677**)
- ✓ \$500 anti-fraud fee, payable to USCIS. This fee is applicable when petitioning for **initial or new H1B status or changes of employer**. It is not required for extension of status.
- ✓ \$1440 expedited processing fee* (optional), payable to USCIS (address as above)

*May be paid by either the applicant or hiring unit with the following exception: if applicant is not being paid more than the amount equal to the Prevailing Wage + \$460, the fee must be paid by department/hiring unit.

2. Letter of Support from Hiring Unit. Maximum H1B request length is three years. Letter should be addressed **to: To Whom It May Concern; California Service Center, US Citizenship and Immigration Services, 24000 Avila Road, Room 2312, Laguna Niguel, CA 92677**. This letter, on department stationery, typically consists of five paragraphs:

- a)** "I wish to support an H-1B application for Dr. X for the position of... This H1B appointment will begin on (month/day/year)*and end on (month/day/year). The position will carry a salary of \$...per..." (***Note: this refers to the date of the *preferred* H1B start date, NOT the start date of actual employment. If individual is CURRENTLY on F-1 practical training or J-1 academic training, you may wish to discuss their preference for the H1B start date, as they may wish to utilize the full period of current authorized employment. Others may wish to begin the H1B status prior to the expiration of their current authorization status.**)
- b)** "The duties of this position are..." (provide detailed summary)
- c)** "The requirements for this positions are..." (be specific; if a PhD is required, say so. All position must require the minimum of a bachelor's degree.
- d)** "[Dr. X] possesses the necessary qualifications for the above position. [Dr. X's] qualifications include..."
- e)** Cornell University is aware employers are required by law to provide return transportation for the H-1B worker if the employment is terminated prematurely.

3. H1B Prevailing Wage Data & Actual Wage Statement

Department Chair should review and sign (Digital signature is OK). **Note: Cornell must pay either the prevailing wage (as per the DOL wage guidelines) or the “actual wage” (as detailed in the Actual Wage Statement), whichever is HIGHER!** If the prevailing wage is higher than the wage being paid to the applicant, the INTERNATIONAL SERVICES will notify you.

4. Signed Certification Regarding Release of Controlled Technology

TO BE SUBMITTED BY APPLICANT TO HIRING UNIT/DEPARTMENT

- ✓ H1B Applicant Data Sheet (attached)
- ✓ Copy of Ph.D. diploma and an official student transcript. (If the diploma is in a language other than English or Latin, it must be translated into English, and the translation must be certified as identical to the original). Applicants may be required by USCIS to provide an original diploma copy, and/or a credential assessment. INTERNATIONAL SERVICES will notify the hiring unit and applicant, if this is the case.
- ✓ Copy of the CV.
- ✓ Copy of passport ID (photo) page and biographical information page. Include any page that shows that his or her passport expiration date has been extended as well as the visa stamp for the applicant’s current visa status, if the applicant is already in the US.

POSSIBLE ADDITIONAL REQUIREMENTS – If Applicable:

IF PRESENTLY IN THE UNITED STATES - Copy of Form I-94. Can be found at <https://i94.cbp.dhs.gov/i94/request.html>

IF IN F-1 STUDENT STATUS (OR ON F-1 OPTIONAL PRACTICAL TRAINING) - Copy of all I-20’s and EAD, if applicable (Employment Authorization Document), and copies of the 3 most recent pay stubs.

IF CURRENTLY, OR EVER, IN J-1 STATUS - Copy of all DS-2019 forms, and copies of the 3 most recent pay stubs. Please note: If the visitor is, or has ever been on a J-1 visa and is subject to, but has not complied with, a waiver of the two-year foreign residence requirement, an official waiver (**I-612 Approval on Form I-797**) of the requirement will be needed.

IF PRESENTLY, OR EVER, IN H-1 STATUS - Three (3) copies of all former Forms I-797 (H-1B Approval Notices) and three copies of the 3 most recent pay stubs.

IF THERE ARE DEPENDENT FAMILY MEMBERS WHO ARE IN THE US (and wish to change to, or extend, H4 status) - Form I-539, Application to Change/Extend Status. **The form is completed in by the dependent family member, not by the H1B applicant or Hiring Unit.** We recommend that applicants keep a copy of the dependent materials, as the INTERNATIONAL SERVICES does not retain a copy of these materials. If submitting Form I-539 with H1B packet, the following items:

- a. \$370 check for I-539 fee & \$85 biometric fee per dependent, payable to USCIS

- b. Copy of each I-94 card for family members requests the change of status
- c. Copy of marriage certificate and translation (if spouse is applying)
- d. Copies of the photo pages and biographical pages of passports, including visa stamps showing their current visa status, for all dependents applying for the change of status

IF THERE ARE DEPENDENT FAMILY MEMBERS WHO ARE NOT IN THE US

The H-1B's family members will need to make an appointment with a US Consulate to apply for H4 visa stamps in their passports. They will not be able to enter the country without this stamp. They should be prepared to pay the application fee, which varies, depending on country of citizenship. They should contact the Consulate directly for fees and complete application instructions. For each individual, they should bring to the Consulate:

- A filled-in Form DS-156 (Non-Immigrant Visa Application).
- A photocopy of the H-1B's approval documents.
- One recent passport-style photograph two inches square, with the entire face visible.
- Copy of marriage certificate and translation (if spouse is applying for H4 visa stamp)
- Passport(s), valid for at least six months beyond the end date of the H-1B's appointment.
- Birth certificate(s), if the applicant is a dependent child below the age of 21

TO BE COMPLETED BY HIRING UNIT
H1B Prevailing Wage Data & Actual Wage Statement

Employers must gain the approval of the Department of Labor before filing an application to the USCIS for an H-1B Temporary Worker. Please notice the four conditions of employment to which the employer must attest before gaining the approval of the Department of Labor.

Four conditions:

1. H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in questions **or** the prevailing wage level for the occupation in the area of employment, **whichever is higher**.
2. The employment of H-1B nonimmigrant will not adversely affect the working conditions of workers similarly employed in the intended area of employment.
3. On the date the application is signed and submitted, there is no strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment
4. That notice of the application has been provided to workers employed in the occupations in which H-1B nonimmigrants will be employed, either to the bargaining representative of workers in the occupations in which H-1B nonimmigrants will be employed; or that a notice of this filing is **posted for 10 days in a conspicuous place** where H-1B nonimmigrants will be employed. International Services will post notices of behalf of Cornell University at:
<https://international.globallearning.cornell.edu/host-departments/labor-condition-applications>

Additional REQUIREMENT: An employer is responsible for return transportation costs for any H-1B temporary worker whose employment is terminated prematurely.

Regulations require that the employer document “a full, clear explanation of the system that the employer used to set the ‘actual wage’ the employer has paid or will pay workers in the occupation for which the H-1B nonimmigrant is sought, including any periodic increases which the system may provide...” {20 CFR Part 655 and 29 CFR Part 507} This information must be retained in the employee’s personnel file and in a public access file.

In order to meet federal regulations, you must provide the following information and confirmation. All questions must be answered. Please attach additional sheets if necessary.

INFORMATION ABOUT THE EMPLOYEE

1. Name of alien employee:
2. Degree(s) which the alien holds:

INFORMATION REQUIRED FOR PREVAILING WAGE DETERMINATION:

1. Title of position offered:
2. Annual salary or hourly rate:
3. Hours worked per week:
3. **Minimum** degree required for the position:
4. Field(s) of Study required or accepted:
5. Years of experience or training **REQUIRED** for position, describe in detail:

6. List all work sites for this position.
 ___ Cornell University Campus, Ithaca, NY
 ___ Other (list) :

7. Job duties for this position (be as detailed as possible, attach a description, if necessary):

8. Job Title of the Supervisor
9. Will the position supervise other employees? If yes, how many?
10. Will travel be a required part of duties? If yes, explain.
11. Are there any other working conditions that affect the rate of pay? If yes, explain.

DETERMINATION OF ACTUAL WAGE FOR THE POSITION

1. What is the pay rate **or** pay range for other workers in the same position in the department who have the same level of education, experience, and skills as the alien employee? (*cannot be higher than the salary offered to H-1B applicant*):
2. If there is variation in the salaries of workers in the same job as that of the alien employee, specify and explain the factors that account for this variation (i.e. additional duties such as supervisory duties, differences in the number of publications produced, significant awards held, etc...)
3. Explain the system or factors used to determine the wage offered to the alien employee:
4. Explain the system used to evaluate the alien employee's performance and to provide for periodic pay increases.

IV. CERTIFICATION

I certify that all information contained in this actual wage statement is true to the best of my knowledge. I can provide additional details pertaining to statements made regarding the actual wage for the occupation discussed if needed. I am aware of the conditions of employment (including provision of return travel) for H-1B temporary workers. I authorize International Services to seek approval from the Department of Labor and USCIS for an H-1B temporary visa on behalf of the above named individual.

Signature faculty advisor or supervisor

date

name and title (print)

signature of department chair

date

name and title (print)

To be completed by Hiring Unit

Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the US.

There is a federal requirement that employer's certify that they have reviewed the **Export Administration Regulations (EAR)** and the **International Traffic in Arms (ITAR)** and have determined whether a license is required from The US Department of Commerce or the US Department of State to allow an employee access to controlled technology. This attestation is REQUIRED for all H1B petition and O-1 petitions.

Please take some time to review the information on US export* controls at Cornell University's Office of Research Integrity and Assurance:

<https://researchservices.cornell.edu/policies/exportcontrols-regulations-and-overview>

The hiring supervisor, Department Chair, or other appropriate University authority responsible for oversight of an employee's work and access to technology, must attest to one of the following two statements in order for the INTERNATIONAL SERVICES to process the H1B or O-1 petition.

Please understand that a license may be required. Questions on Export License's and EAR and ITAR requirements should be directed to the Mgr of EC at exportcontrols@cornell.edu, after a thorough review of the information published on their web site.

Attestation (appropriate Cornell authority must check one and sign):

____ I certify that a license **is not required** from either the U.S. Department of Commerce or the U.S. Department of State to release such technology (as described in EAR and ITAR) to the foreign person, or

____ I certify that a license **is required** from either the U.S. Department of Commerce or the U.S. Department of State to release such technology (as described in EAR and ITAR) to the foreign person and I will prevent access to the controlled technology or technical data until the required license or other authorization has been obtained.

(Name, please print)

(Title)

(Signature)

(Date)

* Technology and technical data provided to a foreign national within the US is considered an export.

H1B Applicant Data Sheet : **PLEASE TYPE **

Family Name:

Given Name:

Middle Name:

Provide all other names you have used. Including aliases, maiden name:

Date of Birth (please use mm/dd/yyyy format):

Gender: Male Female U.S.

Social Security (if any):

Alien Registration/A# (you would have one if you had OPT as an F1 student):

Country of Birth:

Province of Birth:

Country of Citizenship or Nationality:

Email Address:

If in the United States:

Date of Last Arrival (mm/dd/yyyy):

I-94 Arrival Record Number (can be found at <https://i94.cbp.dhs.gov/i94/request.html>):

Passport Number:

Date Passport was issued (mm/dd/yyyy):

Date Passport expires (mm/dd/yyyy):

Passport Country of Issuance:

Current Nonimmigrant Status:

Date Status Expires or D/S (mm/dd/yyyy):

SEVIS Number (if any):

EAD Number (if any):

Please circle **YES** or **NO**: Have you received, since **February 24, 2020**, any public benefits (more information: <https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>)? This includes any federal, state, local, or tribal cash assistance for income maintenance; Supplemental Security Income (SSI); Temporary Assistance for Needy Families (TANF); Federal, state or local cash benefit programs for income maintenance (often called "General Assistance" in the state context, but which may exist under other names); Supplemental Nutrition Assistance Program (SNAP, or formerly called "Food Stamps"); Section 8 Housing Assistance under the Housing Choice Voucher Program; Section 8 Project-Based Rental Assistance (including

