



H-1B Visa Frequently Asked Questions

Q : What is an H-1B?

The H-1B is a nonimmigrant classification used by an alien who will be employed temporarily in a specialty occupation or as a fashion model of distinguished merit and ability.

Q : What is a specialty occupation?

A specialty occupation requires theoretical and practical application of a body of specialized knowledge along with at least a bachelor's degree or its equivalent. For example, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts are specialty occupations.

Q : Is there an annual limit on the number of H-1B aliens?

Yes. The current law limits to 65,000 the number of aliens who may be issued a visa or otherwise provided H-1B status in FY2004. (The numerical limitation was temporarily raised to 195,000 in FY2001, FY2002 and FY2003.)

Q : How does one apply?

H-1B status requires a sponsoring U.S. employer. The employer must file a labor condition application (LCA) with the Department of Labor attesting to several items, including payment of prevailing wages for the position, and the working conditions offered. The employer must then file the certified LCA with a Form I-129 petition plus accompanying fee of \$130. (Prior to FY2004, employers were required to submit an additional \$1,000 fee to sponsor the H-1B worker, unless specifically exempt.) Based on the USCIS petition approval, the alien may apply for the H-1B visa, admission, or a change of nonimmigrant status.

For additional information on employer's filing needs, please visit the Department of Labor's Foreign Labor Certification page.

Q : How long can an alien be in H-1B status?

Under current law, an alien can be in H-1B status for a maximum period of six years at a time. After that time an alien must remain outside the United States for one year before another H-1B petition can be approved. Certain aliens working on Defense Department projects may remain in H-1B status for 10 years. In addition, certain aliens may obtain an extension of H-1B status beyond the 6-year maximum period, when:

365 days or more have passed since the filing of any application for labor certification, Form ETA 750, that is required or used by the alien to obtain status as an EB immigrant, or
365 days or more have passed since the filing of an EB immigrant petition.

Q : Who can an H-1B alien work for?

H-1B aliens may only work for the petitioning U.S. employer and only in the H-1B activities described in the petition. The petitioning U.S. employer may place the H-1B worker on the worksite of another employer if all applicable rules (e.g., Department of Labor rules) are followed. H-1B aliens may work for more than one U.S. employer, but must have a Form I-129 petition approved by each employer.

Q : What if the alien's circumstances change?

As long as the alien continues to provide H-1B services for a U.S. employer, most changes will not mean that an alien is out of status. An alien may change H-1B employers without affecting status, but the new H-1B employer must file a new Form I-129 petition for the alien before he or she begins working for the new employer. The merger or sale of an H-1B employer's business will not affect the alien's status in many instances. However, if the change means that the alien is working in a capacity other than the specialty occupation for which they petitioned, it is a status violation.

Q : Must an H-1B alien be working at all times?

As long as the employer/employee relationship exists, an H-1B alien is still in status. An H-1B alien may work in full or part-time employment and remain in status. An H-1B alien may also be on vacation, sick/maternity/paternity leave, on strike, or otherwise inactive without affecting his or her status.

Q : Can an H-1B alien travel outside the U.S.?

Yes. An H-1B visa allows an alien holding that status to reenter the U.S. during the validity period of the visa and approved petition.

Q : Can an H-1B alien intend to immigrate permanently to the U.S.?

Yes. An H-1B alien can be the beneficiary of an immigrant visa petition, apply for adjustment of status, or take other steps toward Lawful Permanent Resident status without affecting H-1B status. This is known as "dual intent" and has been recognized in the immigration law since passage of the Immigration Act of 1990. During the time that the application for LPR status is pending, an alien may travel on his or her H-1B visa rather than obtaining advance parole or requesting other advance permission from Immigration to return to the U.S.