

H-1B Frequently Asked Questions

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Are there any more H-1B's left this year? There are a limited number of H-1B visas available each year in the business industry, however universities are not subject to this limit, also referred to as the H-1B "Cap".

Am I eligible for H-1B Status? At the University of Idaho (UI), the H-1B immigration category is used most commonly for tenure-track faculty positions, but can also be used to employ international faculty and staff in permanent or temporary teaching and/or research positions, coaching positions and some permanent classified or exempt positions (depending upon the position). Some of the more common categories are: Professor, Associate Professor, Assistant Professor, Instructor/Lecturer, Assistant Research Professor, Post Doctoral Research Associate, Research Assistant, and Associate in Research levels.

Note: Persons who hold, or have held, J-1 or J-2 status and are subject to the two-year home country residency requirement are not eligible for H-1B status until the two-year requirement is either fulfilled or waived.

How do I apply for H-1B status at the UI? It is the responsibility of UI to complete all required paperwork and file the petition. As the employee, you do not actually complete or sign any immigration forms yourself. According to UI policy, only ISSFS is allowed to file H-1B petitions for UI departments and a prospective foreign national UI employee. Outside immigration lawyers are not allowed to represent the UI in the filing of H-1B petitions.

Does the employer need to advertise the job? Immigration regulations do not require that the job be advertised as part of the H-1B petitioning process. However the employers must post two copies of the LCA for 10 business days in the workplace as part of the required process. Instruction is given to the employing UI department by ISSFS for postings.

After I get H-1B status, may I accept any job? No! The work permission in H-1B status is granted for a specific job with a specific employer. You must consult with the ISSFS *before* starting a new position at UI or anywhere else. Also, you must consult ISSFS if there is a significant change in your current position, such as a change in salary, hours worked, job responsibilities, etc. It may be necessary to file an amended H-1B petition.

When may I begin working? In order to be employed in H-1B status, you must have both an approved petition for UI and be in valid H-1B status. You may not begin working until then, unless you have another status that permits employment. For this reason, F-1 students often choose to apply for practical training authorization (OPT) and use this as a bridge to H-1B employment at UI. You do not need a job offer in order to apply for OPT. If the UI files an H-1B petition for you, please note that it must be filed AND APPROVED prior to the expiration of your OPT work authorization.

Notes: It may be possible for you to begin work immediately after UI files a new H-1B petition if you are currently in legal H-1B standing but employed by another institution.

For questions regarding transferring your approved H-1B status from another employer to the UI, please contact ISSFS.

If I get H-1B status, how long may I remain in the U.S.? . You may stay in the US for as long as you remain employed in the position described in the H-1B petition filed by UI and as long as your approved petition is still valid. When filing an H-1B petition the UI requests that USCIS grant employment authorization for typically no less a year. USCIS will normally grant H-1B status for the requested period of time, but no longer than 3 years at a time. The normal maximum stay in H-1B status is 6 years.

If my job ends earlier than expected, may I still remain in the U.S.? No you may not. If your job ends before the end of your H-1B petition approval, UI must report employment end to USCIS. You may remain in the U.S. for only ten days after the termination of your employment.

What if my employer wants to give me a promotion? If there are any substantial changes in your job such as a new job title, changes in required qualifications, significant change in job duties, new location, etc, then UI must file an H-1B amended petition.

If I wish to change jobs at UI, what must I do? If you wish to change jobs at UI, a new H-1B petition must be filed if there are any substantial changes in your job. Note: According to immigration law which went into effect October 17, 2000, you may begin working as soon as your new employer files the H-1B petition with the USCIS. You do not need to wait for the petition to be approved. This rule applies to scholars who are transferring to UI in H-1B status and to those who are changing jobs at UI. When changing STATUS to H-1B though, you must wait for the Approval Notice.

How long does it take to get H-1B status? The estimated processing times at the U.S. Citizenship and Immigration Services (USCIS) are 3-6 months for a standard petition. The estimated processing time at USCIS for a "premium processing" request is 15 business days. However, before filing the petition, ISSFS must gather the

documentation from the department and scholar to prepare the petition, which takes about 2-3 weeks.

How much does an H-1B petition cost? The USCIS filing fee is \$325.00 plus a \$500.00 anti-fraud fee for all initial and transferring H-1B cases. There is an additional \$1,225 premium processing fee for expedited petitions. UI departments are required to pay the filing fee, the fraud fee and, depending on circumstances, the expedited processing fee. The USCIS filing fee for change/extension of status for dependents is \$290.00 regardless of the number of dependents. This dependent fee is typically paid by the scholar.

Can I ask for my H-1B to be processed faster? USCIS offers an expedited service for certain employment-based petitions including the H-1B called premium processing. Once premium processing requested and has been received by the service center, the USCIS guarantees a response within 15 calendar days. The USCIS fee for premium processing is \$1,225.

What about my dependents? If you have been granted H-1B status, your spouse and children (under 21) will normally be eligible for H-4 status. If you and your dependents are in the U.S. in legal status and the UI is requesting that your status be changed to H-1B, your dependents may apply for a change to H-4 status. Your spouse and child should complete and sign Form I-539 and submit it with the UI petition. The I-539 should be signed by your primary dependent and not by you, unless the oldest dependent is a minor child. If your dependents are outside the U.S., UI does not need to include any information about them in the petition. After the petition has been approved, they may apply for H-4 visas at a U.S. Consulate. Spouses should expect to present a marriage certificate and birth certificate and children will be expected to present a birth certificate. Note: a person with H-4 status may not be employed in the U.S. but is eligible to attend school full-time.

May I still enroll in school after I change to H-1B status? Yes. If you have H-1B status, the employment should be your primary purpose for being in the U.S. However, you may still register and/or complete a degree while you have H-1B status.

Note: You may not accept an assistantship or other student job while you have H-1B status.

Can my H-1B Petition be denied? If the position is a professional level one and the employee has a degree in a related field, the chances are excellent that the petition will be approved, although there are sometimes delays if the USCIS has questions. Potential problems include:

- If you are currently out of status, you may not change to H-1B status in the U.S. and you will be required to return to your home country to apply for a visa after the H-1B petition is approved.
- If the employee will not be earning the prevailing wage then the employer may not file the Labor Condition Application and thus may not file an H-1B petition. In this case there is no opportunity for an actual USCIS denial. The petition cannot even be filed.

Is there any other kind of immigration status that I can use instead of H-1B?

H-1B is a status normally required for a non-immigrant to accept permanent or temporary at the UI. It may be the only one available to you after your F-1 student optional practical training expires. Additional statuses commonly used to employ scholars at UI include.

- F-1 students are usually eligible for 12 months of optional practical training after (and sometimes before) graduation.
- J-1 Scholars and Students: J-1 students are sometimes eligible for 18 months of academic training or 36 months in a post-doctoral research position with permission from the sponsor. A J-1 scholar may be employed as a non-tenure track teacher or researcher position at UI.
- TN: (NAFTA Treaty): This status can be used by professional employees from Canada and Mexico and is similar to H-1B. However, there is no requirement for the employer to pay or to document the prevailing wage, and the application procedure is much faster than an H-1B. The occupations covered are restricted to those allowed under NAFTA. Note: Mexican nationals need to apply for the H-1B visa stamp in the passport while Canadian citizens are exempt from the visa requirement.

How should I apply for TN status, if I am a Canadian citizen? You can gain TN status by presenting yourself to the Trade NAFTA Officer at a United States Port of Entry or by applying for a change of status to TN in the US, if you currently reside in the US and are maintaining another non-immigrant status. Please contact an ISSFS advisor for help in obtaining this status.