H-1B Basics

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Session Overview

• Immigration Basics and Terminology
• H-1B Key Features
• H-1B Process
• Post H-1B Filing Responsibilities
• Frequently Asked Questions

Immigration Basics & Terminology

• Immigration is an Alphabet Soup of terms and anagrams
  - H-1B
  - F-1
  - J-1
  - EB-2
  - USCIS
  - DOS
  - CBP

Main Federal Agencies Involved in Immigration
- Department of Homeland Security (DHS)
- U.S. Citizenship and Immigration Services (USCIS)
- U.S. Customs and Border Protection (CBP)
- U.S. Immigration and Customs Enforcement (ICE)
- U.S. Department of Labor (DOL)
- U.S. Department of State (DOS)

“Visa” Types
- Named after sub-section of Immigration & Nationality Act (INA)
- H-1B : INA § 101(a)(15)(H)(i)(b)

Visa is a travel document
Also known as “Visa Stamp”

 Allows you to go to point of entry and seek admission in a certain status
 Point of Entry
  - Airport
  - Sea Port
  - Land Crossing (i.e. Windsor Tunnel or Ambassador Bridge)

Status is the basis of:
- Your authorization to be in the U.S.
- Your authorization to work in the U.S. (not all status types grant you work authorization)
- Status is conferred by Form I-94

If already in the U.S. in a certain Status and don’t leave the U.S., never need to get a Visa Stamp, unless travel and want to re-enter the U.S.
Immigration Basics & Terminology

- CBP no longer issuing Form I-94 cards at air or sea ports
- Now CBP officer will stamp your passport & write information regarding status on stamp
- Allow you to print Form I-94 at home from CBP website

What Is An H-1B?

- An H-1B is a non-immigrant visa that authorizes temporary employment to foreign nationals in a specialty occupation

A Specialty Occupation?

- An occupation which requires:
  - The theoretical and practical application of a body of highly specialized knowledge, and
  - The attainment of a bachelor's degree (or equivalent) in a field of study related to the position is the minimum requirement for the position

Who Can File?

- H-1B petitions are employer-based
  - The employer must file on behalf of the foreign national employee
- Two Types of Employers for H-1B Purposes:
  - Cap Based
  - Cap-Exempt

Cap Based

- Only 65,000 available (an additional 20,000 for those workers holding a U.S. Master's degree or higher)
- Companies in the Private Sector:
  - Such as:
    - Ford, GM, Chrysler
    - Quicken Loans

Cap-Exempt

- Nonprofit Research Organizations
- Governmental Research Organizations
- Institutions of Higher Education
  - University of Michigan
  - We can file an unlimited number of H-1B petitions
  - Everything goes through the IC
UM H-1B Numbers

- UM typically files over 375 H-1Bs per year
- At any given moment, there are more than 600 active H-1B employees at UM
- The IC takes anywhere from a few weeks to a few months to prepare each petition

H-1B Parameters

- Employer Specific: Only work for the employer who files the H-1B petition on his/her behalf
- Job Specific: Only work in the position described in the H-1B petition
- Date Specific: Only work for the duration approved by USCIS

H-1B Duration

- A maximum of 6 years in H-1B status in the U.S., in no more than 3 year increments
  - After 6 years, must depart the US for 1 year in order to be eligible for another 6 year H-1B period
- Extensions beyond 6 years are possible if an employment-based permanent residency case has been FILED before the end of the 5th year
  - 1-year extension
  - 3-year extension
  - ONLY if subject to Retracement (Individuals BORN in China or India in EB-2 category & all individuals in EB-3 category)

What’s Required?

- The foreign national must:
  - Have an offer of employment from the University of Michigan (part-time or full-time)
  - Possess the minimum requirements for the position*

  * The degree MUST be related to the position, and all requirements for the degree MUST be completed BEFORE filing the H-1B petition

Ph.Ds

- For a position requiring a Ph.D., we cannot file the H-1B petition until all requirements are met, INCLUDING the successful defense of the dissertation

Dependents (H-4)

- H-4 for spouse and minor children (under 21)
- H-4s cannot engage in employment in the US unless spouse has approved I-140 immigrant petition OR spouse's H-1B has been extended beyond the 6th year based on a pending permanent residency case
- H-4s can study
- I-539 is filed on H-4s behalf; no paperwork necessary if outside of the US
- Department is usually hands-off with dependents
Types of H-1Bs

New to UM
- Foreign National who is already in U.S. in a different status
  - Student (in F-1 or J-1 status)
  - Employed somewhere else (in F-1 OPT, J-1, TN status)
  - "Change of Status"
- Foreign National who is abroad
  - "Consular" or "Overseas"
- Transfer

Transfer
- Already in the U.S. in H-1B Status at a different employer
  - Current Employer Can be Cap Based or Cap-Exempt
  - Doesn’t matter because UM is Cap-Exempt

PORTABILITY

Adopted by “AC-21” legislation
- An H-1B Employee who is “porting” his or her H-1B status from a different Employer to UM:
  Can Begin Working at UM once our H-1B petition is FILED*
  Foreign National Does NOT have to wait until approval

*Filed = Received and Accepted by USCIS

Important Clarification

- Transfers, amendments and extensions are the ONLY times a foreign national can work with a pending H-1B petition
  - 240 Day Rule:
    - IF petition FILED before expiration of current H-1B Approval Notice
    - THEN employee can continue working for up to 240 days pending review of new petition
- An employee with a pending change of status application and expired work authorization MUST WAIT for the H-1B approval notice

H-1B Costs

- IC Processing Fee: $1,300 (New H-1B)
  - $1,125 (Extensions/Amendments)
- I-129 Filing Fee (DHS): $325
- Fraud Prevention Fee (DHS): $500
  - only for new H-1B employees
- 1-539 Filing Fee for H-4: $290
- Optional Premium Processing Fee $1,225
  - guarantees review and decision or RFE* within 15 days of filing

Checks

- UM Departments must use university checks for all
  H-1B petition fees
- Employees usually pay H-4 filing fee for dependents
- UM Procurement, Logistics, and Business Services office has established a process to expedite university checks for departments (check memos)
H-1B Process Outline

- Phase 1: Information Gathering (1-3 weeks)
- Phase 2: LCA Filing (1-10 weeks)
- Phase 3: Form and Supporting Letters (1 week)
- Phase 4: USCIS Adjudication (2 weeks – 5 months)

Start to Finish:
4 Weeks – 8 Months

INSZoom

- Web-based software
- Really easy to use, but…

Department Initiates Case

INSZoom Questionnaires

Wages

- **Prevailing Wage:** The wage paid to workers with similar experience in a specific occupation (as defined by the DOL) within a geographic area
  - The IC, in conjunction with HR and sometimes the DOL, will determine the appropriate prevailing wage for the position
- **Actual Wage:** The wage paid by employer to other employees with similar experience in same position

The department MUST pay the employee the higher of the prevailing wage or actual wage

Actual Wage Determination

- **Job Title:**
- in Department/College/School:
- Number of employees in department in same position (excluding the H-1B beneficiary):
- Number of employees who are “similarly employed” (excluding the H-1B beneficiary):
- Wage range for similarly employed individuals (excluding the H-1B beneficiary): $ to $ per year.
- Salary for the H-1B beneficiary: $
- Adjustments are made based on the following factors (e.g. merit)
LCA Posting

- **Purpose:** To alert American workers of H-1B employment and intent to pay prevailing wage
- Two copies must be posted at department for 10 working days, and then signed and returned to IC

Labor Condition Application (LCA)

- IC files LCA with the Department of Labor
- Must file an LCA and include a certified copy with every H-1B petition filed, regardless of type
- Department of Labor certifies based on our application that:
  - for this specific position
  - in this specific geographical area
  - UM is paying the employee at or above the Required Wage
  - Takes 7 days to get approved

Export Control

- Department must affirm that no export control license is required
- We are required to make a certification regarding the release of controlled technology or technical data subject to the Export Administration Regulations or the International Traffic in Arms Regulations to foreign persons in the US
- PI or supervisor signs ECM. If unsure if EC applies, contact UM’s DRDA ITAR Group

Forms Review

- I-129 (6-7 pages)
  - Foreign national, employer, position info
- I-129H (2 pages)
  - Position Info, any previous H-1B info
- I-129DC (3 pages)
  - Data collection, fee determination
- I-907 (2 pages)
  - Premium Processing information
- I-539 (4-7 pages)
  - Dependent's immigration information

H-1B Adjudication

- USCIS will take anywhere from a few weeks to 5 months to make their determination (depending on their workload and mood)
- Case status can be checked online at uscis.gov

Requests For Evidence

- Sometimes, USCIS will issue us a Request For Evidence (RFE)
- Often request clarification of minor issues, but…
- Common RFEs include proving that the position:
  - is this a specialty occupation
  - that the employee has appropriate education/licensure
  - that the employee has maintained their immigration status while in the US
**H-1B Approval**

- Employee will meet with IC when Approval Notice arrives and will learn about their immigration responsibilities while on an H-1B
- Recent IC Policy Change
  - Original Approval Notice now given to employee

**Dept. Responsibilities**

- Notify IC of any changes to employment
  - Responsibilities/job duties
  - salary (other than annual merit/equity increases)
  - number of hours
  - work location
    - May require filing an Amendment with USCIS if change is “material”
    - International Center determines what is “material”
- Always pay employee NO LESS than what was listed in their H-1B petition (Form I-129) and LCA

**Dept. Responsibilities**

- If early termination initiated by U of M Dept.
  - Dept. MUST offer to pay cost of return transportation to country of last residence
    - Does not include cost of moving personal items
    - Does not include cost for dependent transportation
  - Departing Employee must sign form
  - IC will be updating this form shortly, but requirements will be the same
To Extend or Not to Extend?

- Contact IC well in advance to see if/when to apply for an extension
- Renewing the H-1B is not always required when a PR case is in the I-485 stage; depends on the situation
  - EAD and Advance Parole (travel) options

USCIS Site Visits

- USCIS will occasionally send an ICE officer to verify the information that we listed on an H-1B petition – sometimes they give us a heads up, sometimes they don’t
- It’s nothing to worry about
- Answer any question that they have truthfully – show them around the work location if they ask, and pull information from MPathways if required.
- Please notify us afterwards about the things that they asked

Other Employment-Based Non-Immigrant “Visas”

- O visa
  - Extraordinary ability in sciences, arts, education, business, or athletics
- P-3 visa
  - Australian in Specialty Occupation
  - Does not require prior approval of USCIS to obtain visa stamp
  - Does require a certified LCA, thus there is a wage requirement
  - Can be renewed indefinitely in 2 year increments with retention of non-immigrant status
- TN visa
  - NAFTA visa for Canadians and Mexicans ONLY
  - Does not require prior approval of USCIS
  - Proposed job MUST be on NAFTA Job List
  - Requires a letter from employer with specific details
  - Canadians do not need visa stamp
  - Can be renewed indefinitely in 3 year increments as long as non-immigrant status is maintained

FAQ

Q: Can the foreign national employee apply for H-1B status themselves?

A: No – the H-1B is employment-based and the employer must file.

FAQ

Q: If there are changes to the position (promotion, job responsibilities, number of hours worked, etc.), what should I do?

A: Contact the International Center; an amendment may be necessary.
FAQ

Q: If the employee stops working at my department (whether voluntarily or involuntarily), is there anything that I should do?

A: You should contact the IC if an H-1B employee leaves before the approval end date. UM may have to withdraw or amend the H-1B application if foreign national transfers to another department within UM.

FAQ

Q: If the PI’s funding runs out before expected or before the end date on the employee’s approval notice, what should I do?

A: You should contact the IC. UM may be responsible for ensuring that the employee returns home (i.e. buying him/her a plane ticket).

FAQ

Q: The supervising faculty/PI doesn’t care about immigration and wants the foreign national to come pronto. What do I do?

A: Have the supervising faculty/PI contact us – we are more than happy to meet him/her and go over the regulations with them.

Questions?

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