

H-1B

Overview

H-1B status is available to citizens of all countries. To qualify for H-1B status, the foreign national must intend to come to the U.S. to be employed in a “specialty occupation.” A specialty occupation is an occupation that requires the “theoretical and practical application of a body of highly specialized knowledge; and [the] attainment of a bachelor’s or higher degree in a specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” The [wage requirement](#) [1] must be met. Health care workers are also subject to several [additional requirements](#) [2].

Maximum Validity

H-1B status can normally be awarded for a total of up to 6 years, but in increments of no longer than 3 years. Any time spent abroad during these 6 years can be reclaimed and added to the total, as long as the absences from the U.S. can be documented. Extensions past the 6th year are possible under limited circumstances, but only if the foreign national is the beneficiary of an employment-based green card application. Once someone has exhausted his or her time in H-1B status and no extensions based on an underlying green card application are possible, the foreign national must reside abroad for a full year in order to become eligible for a new 6 year period of H-1B status

Requesting H-1B Status and Timeline

To request H-1B status for a foreign national, FSIS must file a petition with USCIS. Hiring department submits the standard [H-1B/ TN/ E-3 Authorization Form](#) [3]. This form should be received as soon as a decision on sponsoring a foreign national or extending a foreign national’s immigration status has been made.

The H-1B process application process can take a significant amount of time. FSIS needs approximately one month to prepare an H-1B petition. Such petitions are prepared on a first-in, first-out basis. Once the petition is submitted, USCIS normally needs about two to three months to make a decision on the application. However, USCIS does not guarantee this timeframe. For a \$1,225 government filing fee, it is possible to request Premium Processing (i.e. expedited processing). Petitions filed under Premium Processing are considered by USCIS within 15 days of receipt by USCIS. Note that in the case of transfer, extension or amendment petitions, with some limitations, the employee may [start/continue their employment while the petition is pending with USCIS](#) [4].

Individuals who are currently abroad will also need to apply for an H-1B visa at the consulate or embassy.

Visa application timelines depend on a variety of factors, including time of year, nationality or background of the applicant and they also vary from consulate to consulate. Particularly if someone is subjected to administrative processing when applying, a visa application process of 4-6 weeks is common.

For these reasons, it is recommended that FSIS receive any request 5-6 months (or 2-3 months in the case of extensions/amendments) prior to the requested start date.

Fees

For an overview of the various costs associated with an H-1B application as well as an overview of who may pay what costs, please refer to our [section on fees and checks](#) [5].

Dependents

The dependents (spouse and unmarried children under the age of 21) of individuals in H-1B status are eligible for H-4 status. Individuals in H-4 status may study but they may not work, unless they have an EAD. Individuals in H-4 status may qualify for an EAD based on a [pending green card application](#) [6] by filing a [Form I-765](#) [7].

The following individuals in H-4 status are eligible for an EAD:

- Spouses and dependent children in H-4 status who are the beneficiaries of an Adjustment of Status ([I-485](#) [8]) application

The following individuals in H-4 status may also apply for an EAD:

- Individuals in H-4 status whose *spouse in H-1B status* is the beneficiary of an [approved I-140](#) [9] (employment-based Immigrant Petition).
- Individuals in H-4 status whose *spouse in H-1B status* was granted an extension of his or her status beyond the standard maximum period of six years of H-1B status (based on an employment-based green card application. The I-765 may be filed concurrently with the I-539 and I-129 for the status extensions beyond the sixth year.

Please be sure to review the [instructions](#) [10] before filing a request for an EAD. If one's dependents are currently abroad, they can apply for their dependent visa – Canadian citizens are exempt from the visa requirement – on the basis of the primary status holder's H-1B approval notice (Form I-797) and proof of their relationship (e.g., marriage certificate or birth certificate) only. If the dependent is currently in the U.S. in a different immigration status, a [Form I-539, Application to Extend/Change Nonimmigrant Status](#) [11] must be filed with USCIS. This form must generally be filed by the applicant him or herself. If FSIS is filing an application for the primary status holder, FSIS can file this I-539 with the main application. The \$290 filing fee for an I-539 application is the responsibility of the applicant.

Source URL: <https://internationalcenter.umich.edu/fsis/h1b>

Links

[1] <https://internationalcenter.umich.edu/fsis/required-wage>

[2] <https://internationalcenter.umich.edu/fsis/h1b/health-care-positions>

[3] <https://internationalcenter.umich.edu/sites/default/files/forms/h1bAuthorization.pdf>

- [4] <https://internationalcenter.umich.edu/fsis/timelines-premium-processing>
- [5] <https://internationalcenter.umich.edu/fsis/fees-and-checks>
- [6] <https://internationalcenter.umich.edu/fsis/pr>
- [7] <https://www.uscis.gov/i-765>
- [8] <https://www.uscis.gov/i-485>
- [9] <https://www.uscis.gov/i-140>
- [10] <https://internationalcenter.umich.edu/fsis/h1b/applying-ead-while-h4-status>
- [11] <https://www.uscis.gov/i-539>