

UNDERSTANDING THE H-1B PROCESS

This page is a brief overview of the H-1B process for students who may seek H-1B sponsorship through their employers. This FAQ serves as general information on the process and timelines and is not to be considered official immigration advising. Please note that immigration regulations are subject to change and can vary depending on the particular case or situation. Always consult [CGPS](#) and/or the sponsoring employer for additional guidance and information.

STUDENTS PURSUING US HIGHER EDUCATION INSTITUTION JOBS

What is the H-1B visa?

The H-1B is an employer-sponsored nonimmigrant visa that permits temporary employment in “specialty occupations”. While OPT is an employment benefit of the F-1 student visa which allows students to work for a year or possibly longer, the H-1B is a separate visa designated for employment.

What is a specialty occupation?

A specialty occupation is an occupation that requires: (a) theoretical and practical application of a body of specialized knowledge, and (b) a bachelor’s or higher degree in a field related to the occupation.

What is the duration of the H-1B visa?

H-1B status is granted for a maximum of 6 years. The H-1B visa and status can be granted in 3-year increments and can be extended up to a total of 6 years (in certain cases it could be extended beyond that).

What is the H-1B Cap? (DOES NOT apply to the majority of higher education institutions and some non-profit organizations as H-1B employers)

The cap (limit) refers to the number of new H-1B “slots” available during the annual fiscal year. A fiscal year begins on October 1 and ends September 30 of the following year. Currently, regulations set the cap at 65,000 H-1B visas.

However, there are employers that are not subject to the cap. These include institutions of higher education and related non-profit entities, non-profit research organizations, and governmental research organizations. This means that these employers can submit an H-1B petition to USCIS at any time during the year without any concern for the cap during the fiscal year.

Additionally, an additional 20,000 H-1B beneficiaries who have earned a master’s degree or higher from a US institution are not counted towards the cap.

What are the steps to acquire H-1B status?

Processes vary per higher education institution, a diagram of the UD H-1B process with a timeline can be found [here](#).

Who pays for filing the H-1B petition?

Most H-1B fees must be paid by the employer. Foreign nationals are only responsible for the [premium processing fee](#) if premium processing is requested by the foreign national for their own personal reasons, and not for a business necessity.

Who is responsible for filing my H-1B petition if I were to be employed by the University of Delaware (UD)? What about at other universities?

[The Center for Global Programs and Services \(CGPS\)](#) assists departments with the filing of UD H-1B petitions and advises

H-1B status holders and their families on how to maintain status in the United States. At most universities, it will be either the International Student and Scholar Services office or Human Resources that file H-1B petitions. Some universities may also avail themselves of outside immigration counsel to file H-1B petitions.

How long does it take for an H-1B petition to be processed by USCIS?

The processing time for an H-1B petition can vary depending on the circumstances at your employer, the Department of Labor, and USCIS'. It typically takes CGPS approximately 8 months to process an H-1B request, however, this process can take up to a year.

Can I be employed by multiple employers while on H-1B status?

It is possible to have more than one concurrent H-1B position. However, both positions must be authorized by an approved H-1B petition. For example, if a current UD H-1B employee wants to accept a second job with a different employer while still working for UD, that new employer must file a new H-1B petition for concurrent employment.

Can I travel while my Change of Status to H-1B is pending?

A foreign national who is not currently in H-1B visa status should not leave the U.S. once the H-1B

petition is filed with USCIS. If the foreign national leaves while the initial H-1B is being processed, they will have to apply for an H-1B visa at a U.S. Consulate abroad rather than having their status changed in the U.S. Visa processing times vary by consulate and can be as short as a few days, during non-COVID times. However, in some cases, this extra step can delay the start of employment by several weeks. Travelling and obtaining an H-1B visa for the duration of the COVID pandemic is not recommended. Please discuss your intended travel plans with your future employer prior to leaving the U.S.

What is dual intent and does it apply to H-1B holders?

A dual intent visa/status enables foreign nationals to be temporarily present in the United States while also having the intention of possibly immigrating to the U.S. on a permanent visa. The H-1B status/visa is dual intent.

Can UD CGPS advise me on how to obtain my H-1B?

UD CGPS is always happy to help answer any questions you may have regarding this process. If UD is sponsoring you for an H-1B, our International Students and Scholar Services will be working closely with you and your department to collect the necessary information. If another university is planning on sponsoring you, we are happy to answer any general questions about the process. You should, however, ensure that you seek

specific guidance from the university who is planning to sponsor you.

Is the H-1B my only option to work in academia in the U.S. after graduation?

No. As an international student, you may be eligible for other work opportunities based on your visa category.

- Students on an F-1 visa can take advantage of the Optional Practical Training (OPT) option to work as soon as they have a job offer and work authorization from USCIS. Please refer to the OPT webpage here for more information on how to apply for OPT.
- Students on a J-1 student visa can take advantage of Academic Training (AT) to work as soon as they have a job offer and receive authorization from CGPS. Please refer to the AT webpage here for more information on how to apply for AT. Please note that if you have a J1 visa and are subject to the 212(e) two-year home-country residency requirement, you are not eligible for H-1B status until the requirement has been fulfilled or waived. Please contact CGPS before beginning the waiver process, as it could impact your eligibility for J status extensions.