



H1-B VISA FREQUENTLY ASKED QUESTIONS

1. What is an H1-B visa?

H-1B status allows Oklahoma State University hiring departments to sponsor an international employee to obtain employment authorization to work in the U.S. and for OSU. As a dual intent status, an international employee is granted up to a total of six years of employment authorization, three years at a time, to work in the U.S. and is eligible to apply for permanent residency. There are limited circumstances that will allow an international employee to maintain H-1B status past the 6-year limit, such as if they are in a certain stage of permanent residency (“Green Card”) processing.

2. How long does it take to receive an initial or change of status H-1B?

The process of preparing and filing an H-1B petition takes a significant amount of time, and there are many variables that can impact the timeline. It typically takes 4-6 months from initiating the H-1B request to receiving a response from USCIS with premium processing. (Please note that a “response” may be an approval, denial, or request for further evidence.)

HR

3. Who pays for the H-1B filing and attorney fees?

The OSU Department is responsible for all costs associated with the H-1B.

OSU outsources H-1B petition filing to local immigration law firms. Contact HR ISC for current USCIS filing and attorney fees.

4. How long can an international employee be in an H-1B status?

Generally, individuals are entitled to a maximum of six years in H-1B status. The H-1B status is initially valid for 3 years and can be extended for an additional 3 years.

Beyond 6-year H-1B limitation: There are limited circumstances that will allow an international employee to maintain H-1B status past the 6-year limit, such as if they are in a certain stage of permanent residency (“Green Card”) processing.

Recapture of time. If an international employee has spent periods of time abroad during the validity of their H-1B petition, they may be able to “recapture” that time and extend the

duration of their H-1B stay for a period equal to the time the international employee spent outside the U.S. for a maximum of 6 years in H-1B status.

5. When can an H-1B begin work at OSU?

Once an OSU Work Permit is approved and I-9 issued.

If an initial or change of status petition is still pending with USCIS by the requested H-1B start date, immigration has not yet authorized employment at OSU; employee would have to wait until the ISC receives the original I-797 Approval Notice for OSU Work Permit purposes.

6. When will the international employee receive their I-797 Approval Notice?

Once USCIS approves the international employee's petition, they will forward the I-797 Approval Notice to the retained immigration attorney. Please note that it can take anywhere from several days to several weeks for USCIS to mail the approval notice to the attorney. Once the attorney's office receives the approval notice, they will prepare an approval packet and send it to ISC via FedEx. Once received, ISC will notify the international employee to schedule a meeting to pick up the original approval notice and copy of the certified LCA.

7. How does the department receive the invoice and process a check for H-1B fees?

ISC will receive the invoice for filing and fees from the attorney's office and have it approved by OSU Legal Counsel. ISC will then forward the approved invoice to the department to process through OK Corral. The department will need to create a Req and an invoice for the Purchase Order before University Accounting can issue a check. ISC will pick up checks from University Accounting and send to the attorney's office.

8. Who are the checks for USCIS filing and attorney fees made out to?

Checks should be made out to the attorney retained for the services. The immigration attorneys will accept one check for the full amount on the invoice.

9. What's the difference between Premium Processing and regular filing?

Time and money. Regular filing is significantly less costly than Premium Processing, but also takes a significantly longer time.

It takes *at least* 8 months for the retained attorney to receive the I-797 approval notice from USCIS under regular processing. With Premium Processing, USCIS will adjudicate or request more evidence within 15 business days once they receive the petition.

Premium Processing should be utilized if there is a business need to obtain a timely adjudication from USCIS.

10. How is an H-1B status extended?

H-1B extensions can be filed with USCIS up to 6 months before the expiration date of the current H-1B status. Department Head or Director contacts ISC with a request to begin the extension process on employer's behalf. ISC will work with the department, employee, and immigration attorney to prepare and file the petition to extend H-1B status.

11. Can an international employee continue working if their H-1B Extension is still pending with USCIS by the time their current H-1B expires?

If an H-1B extension application is filed with USCIS prior to the expiration of the current H-1B end date, they may be eligible for continuous work authorization for up to 240 days while the application is pending.

12. Can the international employee travel internationally with a pending USCIS extension petition?

Once a petition has been filed with USCIS, the international employee can only travel abroad/re-enter the U.S. after they receive the H-1B extension I-797 Approval Notice.

13. Can an international employee get paid for outside conferences and/or complete work outside of their H-1B?

An H-1B employee is not permitted to accept payment for any activity or services rendered outside of the approved H-1B employer (OSU). They are permitted to receive reimbursement for travel expenses/living expenses associated with an activity. The international employee should keep a list detailing the expenses and how the money was applied in case they must prove 100% went towards travel and associated expenses related to this outside activity.

14. Our new employee is transferring their H-1B to OSU, when can they start working?

Portability Rule/Transfer H-1B: allows current H-1B status holders to begin new employment upon filing of a new petition at a new place of employment such as OSU. HR ISC must receive an official receipt notice before issuing an OSU Work Permit. Be advised that if OSU's H-1B petition is later denied, the employee must stop working immediately.

15. What is an RFE?

Request for Evidence. An RFE is issued by USCIS when they challenge an aspect of the H-1B petition. The department and/or attorney's office must respond by providing more evidence proving the position or employee qualify for the specialty occupation.

16. Can the department change a current H-1B's job description or worksite location?

H-1Bs are approved for a specific job at a specific employer at a specific location (city and state). Any changes require a prior consultation with ISC and/or immigration attorney, and possible approval by USCIS by filing an amended petition to the H-1B.

17. Can an international employee pursue a green card while on H-1B?

Yes, H-1B status allows for dual intent, and an international employee can apply for permanent residency while maintaining H-1B status.

Employment-based green cards require the employer to serve as petitioner on the I-140. Department Head should contact HR-ISC with written support to move forward with this process.

18. How long does an international employee have to wait in order to be sponsored for permanent residency?

It is up to each individual department to determine how long an international employee has to be employed by OSU before they consider sponsorship for permanent residency.

If a department is in favor of an international employee pursuing an employment-based green card, the department head should notify the HR ISC of their support of OSU serving as petitioner.

19. When is the latest permanent residency that can be sponsored?

To be eligible for an extension of H-1B status beyond the 6 years, the first step of the permanent residency filing must be submitted with the appropriate agency, either the Department of Labor or USCIS, by the end of the 5th year in H-1B status. For example, if the international employee's 6 years of H-1B expires on September 30, 2023, the ETA 9089 or I-140 must be submitted to the Department of Labor or USCIS by September 29, 2022, at the latest. Please be aware that it can take up to a year to get to the point of filing the first step with either the Department of Labor or USCIS.

20. How does an international employee or department check the status of a case after it has been filed with USCIS?

USCIS allows you to check the status of a case by using their online Case Status tool. Please utilize this link to track the status of your application: [Case Status Online – Case Status Search \(uscis.gov\)](https://uscis.gov/casestatus)

21. What is an H-4 visa?

An H-4 visa is a temporary, nonimmigrant visa category for the spouses and unmarried children under 21 years of age (dependents) of individuals in an H-1B visa category.

OSU does not advise on dependents or petition their visas. If OSU is petitioning an H-1B for an international employee, the employee will have the ability to retain the immigration attorney to include their H-4 dependents.

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