H-1B PETITION PROCESS

USCIS reserves H-1B status for non-immigrant temporary workers who have at least a bachelor’s degree (or the equivalent) and will be employed in "specialty occupations." A specialty occupation requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the job and requires completion of a specific course of education culminating in a bachelor’s degree in the specific occupational specialty.

There are two phases in the H-1B petition process: the LCA and the petition itself.

Phase I: Labor Condition Application (LCA)

The employer must first obtain a certified Labor Condition Application (LCA) from the Department of Labor (DOL). An LCA states the wage that will be paid to the H-1B worker and certifies that it is both equal to or above the prevailing wage for the position and no less than the employer is paying similarly-employed US workers. ISSS will review the job description and work with you to determine the appropriate skill level for the position, then consult the FLC Data Center for a wage determination.

In the LCA, the employer attests that:

- It will pay the H-1B temporary worker the greater of either the prevailing wage or actual wage for the occupation;
- It will provide working conditions that will not adversely affect those of similarly-employed US workers;
- There is no strike or lockout underway in the occupational classification at the place of employment;
- It has publicly notified its employees’ bargaining representative in the occupational classification at the place of employment of its intent to employ an H-1B non-immigrant—or, if there is no bargaining representative, that it has posted such notice at the place of employment.

The LCA must be posted in two "conspicuous locations" (e.g., a break room or where employment regulations are posted) at the place of employment for 10 consecutive business days before ISSS can submit it to the DOL for certification (an electronic process which can take 7-10 days). The LCA must be certified before ISSS can file the H-1B petition.

Public Access File

The employer must maintain a file containing: a copy of the certified LCA, supporting documentation regarding the actual wage, the prevailing wage, a summary of benefits provided to US and H-1B workers, and the posting notices. This file must be created within one day of the date the LCA is filed.
and must be available for public examination at the employer’s place of business or place of employment for one year beyond the employment end date specified on the LCA. Payroll records must be maintained for three years from the date of the record.

Penalties

The DOL reviews LCAs to determine whether they are complete and contain no obvious inaccuracies. If a complaint is received from an aggrieved party about the employer's failure to meet the applicable standards regarding wages, working conditions, notification of bargaining representatives or employees, or misrepresentation of a material fact in the application, DOL will investigate the employer. If the investigation goes poorly, the employer may face some or all of the following sanctions:

- Impose civil penalties not to exceed $1,000 per violation;
- Being barred from filing applications or attestations for at least 1 year; or
- Being ordered to provide payment of back wages.

Phase II: The H-1B Petition

Petitions for H-1B status may be filed no sooner than six months before the intended employment begins. An initial petition for H-1B status can be approved for up to three years. H-1B status can be extended for up to three more years for a total time in H-1B status of six years. In certain instances, H-1B status can be extended beyond six years in one-year increments if the worker is waiting for PERM approval to begin the path to permanent residence.

Documentation Required

1) Certified LCA
2) Completed Form I-129 (prepared by ISSS and signed by Chief Human Resources Officer)
3) Evidence the scholar has the required degree, either:
   a) Copy of the US baccalaureate or higher degree required by the specialty occupation;
   b) Copy of a foreign degree, translation, and evidence it is equivalent to the US degree; or
   c) Education and experience equivalent to the required US degree - visit Lisano International (www.lisano-intl.com) to download an application for credential evaluation ($100 fee)
4) Copy of any required license or other official permission to practice the occupation in Alabama;
5) Letter from department/division chair (ISSS can work with you to draft) that:
   a) States purpose of the letter (i.e., request H-1B status for temporary employment)
   b) Provides background information on UAB
   c) Describes the proposed employment, including duties to be performed, minimum job requirements, title, salary, start and end dates of employment
   d) Describes the applicant’s qualifications
   e) Includes a statement that the employer will pay the reasonable cost of return transportation if the temporary worker is dismissed before the end of authorized employment, and
   f) States that the employer will fully comply with the terms of the approved LCA
6) Copy of any written contract or offer letter between the employer and the temporary worker, or a summary of the terms of the oral agreement under which the temporary worker will be employed (optional, not required)

If the temporary worker is currently in the US and applying for an extension or change of status, additional information is required:

1) Form I-539, Application for Extension of Stay/Change of Nonimmigrant Status;
2) I-94 card (and cards of any accompanying dependents); and
3) Copies of documentation of previous non-immigrant status (e.g., DS-2019, I-20), passport pages, and J-1 waiver (if applicable)

**Clinical Activities**

A foreign medical graduate (FMG) may participate in clinical activities while in H-1B status if the FMG:

1. Has passed either (a) the Federation Licensing Examination (FLEX); (b) Steps 1, 2, and 3 of the US Medical Licensing Examination (USMLE); or (c) Parts I, II, and III of the National Board of Medical Examiners (NBME) certifying examination; and
2. Is competent in oral and written English as evidenced by passing ECFMG’s English proficiency test; and
3. Has a license or other authorization required to practice medicine in Alabama; and
4. Holds a full and unrestricted license to practice medicine in the FMG’s home country.

Documentation must be provided to support each of the criteria listed above. Any documents written in a language other than English must be accompanied by an English translation which the translator has certified as complete and correct, and by the translator’s certification that he/she is competent to translate from the foreign language into English.

**Filing Fee**

Checks should be payable to “US Department of Homeland Security”

Form I-129 for employee $460 (current processing time is ______ months)

Form I-539 for dependents $370 (current processing time is ______ months)

Form I-907 $1,225 (premium processing, guarantees response (or RFE!) from USCIS within 15 calendar days)

You must request two separate checks if you choose premium processing—amounts cannot be combined.
**Termination**

If employment terminates prior to the H-1B expiration date, the H-1B status is no longer valid. If new employment is offered, an amended H-1B petition must be submitted to USCIS. Consult ISSS immediately if the employee’s employment terminates prior to the H-1B end date.

**Return Transportation Expenses**

Employers who dismiss an H-1B employee before the end of the period stated on the Form I-797, Approval Notice, must pay “reasonable costs” (*i.e.*, not a first-class ticket) for the employee’s return transportation home. The employer must pay for the employee to travel back to his/her last place of residence (not just to Canada or Mexico) outside the US. The employer is not responsible for return costs if the employee voluntarily terminates employment.