

# Carnegie Mellon University

## Office of International Education

5000 Forbes Ave, Warner Hall 3<sup>rd</sup> Floor, Pittsburgh, PA 15213

Phone: (412) 268-5231 • Email: [oie@andrew.cmu.edu](mailto:oie@andrew.cmu.edu) • Web: [www.cmu.edu/oie](http://www.cmu.edu/oie)

### **H-1B (Specialty Occupation) Non-immigrant Status**

#### **Explanation and Terms**

This information is for use by Carnegie Mellon international students, researchers and professors who are interested in H-1B (specialty occupation) status. Included is general information as well as specifics for obtaining H-1B status at Carnegie Mellon University as a researcher, professor, or staff person.

There are several subcategories of the H status for the temporary employment of foreign nationals by a specific employer. The H-1B category is for individuals who will perform services in a “specialty occupation”; this is the H category most frequently used by students who graduate from Carnegie Mellon and by qualified international persons who work at Carnegie Mellon. A “specialty occupation” is a position which requires at least a bachelor’s degree in a specific field as a minimum entry-level requirement. Further, the individual who will be employed must have the minimum degree required for the position and relevant licensure, if any.

The employer (CMU) is the “petitioner” to the U.S. Citizenship and Immigration Services (USCIS) not the individual. In effect, the employer requests permission from USCIS to hire a specific individual (or individuals), for a specific job, at a specific salary. An individual may *not* self petition. The H-1B application is submitted to the regional USCIS Service Center with jurisdiction over the employer’s location (unless the employee is permanently located at a different site); private Pennsylvania employers use the USCIS Vermont Service Center. Cap-exempt employers including Carnegie Mellon submit petitions to the USCIS California Service Center.

#### **Conditions and Limitations**

**6-year limit:** A person may remain in H-1B status for up to 6 years, although an employer may only petition for a maximum of 3 years at one time. There is no minimum period of time -- an employer may petition for a visiting professor to be in H-1B status for only a few months, as an example. Additional extensions beyond 6 years are allowed in limited cases; including when elements of the legal permanent residency petition (“green card”) have been pending for over 365 days or when the H-1B employee has spent time outside of the U.S. during the period of H-1B employment.

**J Status and 2-year home residency requirement:** Persons who are or were in J status and are or were subject to the two-year home residency rule must obtain a Waiver Recommendation from the U.S. Department of State *and* a Waiver from USCIS before they can obtain H-1B status. For more information on obtaining a waiver, visit the U.S. Department of State at: <https://travel.state.gov/content/visas/en/study-exchange/student/residency-waiver.html> and/or make an appointment with your OIE advisor. The waiver process typically takes 6 months or more. The Waiver Recommendation *or* Waiver must be submitted with the other H-1B application materials.

**The Cap:** The U.S. Congress places a limit (“cap”) of 65,000 on the number of *new* H-1B employees who may be processed in a one-year period. In some years, the cap has been reached within days of the beginning of the filing period in April. Once the cap has been reached, no new H-1B’s may be processed or granted until the following fiscal year (October 1 of the next year), barring an action by Congress to increase the cap. Recently, the cap has been reached late in the calendar year—again, leaving a gap until the following October when H’s become available again. An additional 20,000 H-1Bs are available for workers who have completed their

Masters or PhD-level education in the U.S.; these additional 20,000 quota numbers have also been completely filled in the past several years but usually not as quickly as the 65,000. Note: only *new* H-1B applications are counted towards the cap. H-1B petitions from universities (including Carnegie Mellon) and other research and some non-profit organizations are currently excluded from the cap. Therefore, persons who will work for a university in H-1B status need not worry about the cap. Because of the cap, graduating students and those completing F-1 OPT or J-1 Academic Training need to plan carefully for the F-1 or J-1 to H-1B transition period if working in the private sector. F-1 students transitioning from F-1 OPT employment to H-1B employment may be able to use “cap gap” OPT (see the OPT handout or the OIE website under “News”).

Travel outside of the U.S. while the H-1B application is pending: For a change of status case, travel outside of the U.S. while the H-1B application is pending *must* be discussed with the person processing your H-1B application in advance of the H-1B petition being filed with the USCIS. Why? If the employee is in the U.S. in another non-immigrant status (i.e. F or J), at the time of the H-1B application, the H-1B case will request most likely include a “change of status” request. In this scenario, the H-1B petition requests that (1) the employer be allowed to hire the qualified person in H-1B status, and (2) the employee’s non-immigrant status be changed from the current status (i.e. F or J) to H-1B. If the person exits the U.S., the status change portion of the application is considered to be “abandoned.” This results in problems if the person reenters the U.S., when the H-1B is pending or after it has been approved, without having first obtained the H-1B visa stamp in order to enter the U.S. legally in H-1B status.

Consular processing: H-1B employees who are living outside of the U.S. *or* who are in the U.S. but will exit the U.S. during H-1B processing will want to request “consular processing” at the time that the H-1B petition is submitted to the USCIS. In this way, a designated U.S. consulate will be electronically notified of the approval directly by the USCIS. For CMU scholars who are currently in the U.S., discuss consular processing options early in the H-1B process with the OIE advisor or attorney who is processing your petition if you plan any foreign travel during the H-1B application process.

Department of State PIMS system: The U.S. Dept. of State must first verify the approval of the H-1B petition through the Consular Consolidated Database (CCD) in a report called PIMS (Petition Information Management System) before issuing the H visa stamp. All H-1B approvals – initial, extensions, amendments, and changes of status cases – are entered into PIMS. If an H-1B visa applicant is not found in PIMS at time of the H visa application, a two working day process has been developed to research and enter the missing information into PIMS so that that visa application can proceed.

## **Application Process**

2-part Process and Timeline: The application for H-1B status is a two-part process: first, the Labor Condition Application (LCA) through the U.S. Department of Labor, and second, the application for H-1B status to the USCIS. OIE advises people to plan for *at least* 6 months for the processing of the H-1B from beginning to end – from gathering relevant materials, processing the LCA, submitting the H-1B application, and waiting for USCIS response. Processing times at USCIS Service Centers vary greatly and change throughout the year. Ask for updated information on processing times in the region where you will be employed. *USCIS offers “premium processing” of H-1B requests; for an extra \$1,225 fee and with the Premium Processing form, the USCIS guarantees response within 15 days. Even with Premium Processing, OIE recommends 2 months for the whole related process from beginning to end.*

The LCA: The Labor Condition Application (LCA) requires the employer to certify through the U.S. Department of Labor that the wage which will be paid to the employee is a fair and equitable wage in the region. This process is meant to ensure that U.S. workers are not undercut by international workers and also protects international workers from being exploited. The employer also agrees to abide by fair and legal labor practices. (*Note: the LCA process for H-1B status is a different process than the Labor Certification for employment-based permanent residence and does **not** involve proving that no U.S. citizen or permanent resident is qualified and ready to do the job.*)

H-1B application and approval: To apply for H-1B status on behalf of an employee, the employer petitions the USCIS using form I-129, other required forms, the H-1B fee(s), the approved Labor Condition Application, letter of request from the employer, and support materials showing the employee's qualifications for the "specialty occupation." The support materials will include items such as the employee's resume, copies of academic credentials, proof of relevant professional experience, letters of reference, proof of publications, and copies of current non-immigrant documents.

The USCIS usually approves the application or requests additional information. An Approval Notice is mailed by the USCIS to the employer and/or the attorney who represents the employer. The employer or attorney gives to the employee a copy of the Approval Notice, the new original I-94 card, the approved LCA, and a copy of the USCIS Form I-129. The employer may keep the original Approval Notice. NOTE: if an H-1B extension is being processed, the employee will receive a new I-94 showing the extended period of stay. Extension applications do not extend visa stickers in the passport. If an H-1B is traveling and needs a new visa, an application must be made to a U.S. Embassy or Consulate abroad.

Professional H-1B1's for Chile, Singapore: Based on international trade agreements made in 2004, 6,800 H-1Bs have been set aside from the 65,000 cap for professional workers from Chile and Singapore. The application process and eligibility criteria differ from the one that is outlined in this handout. In addition, petitions are only one year in duration and Treaty H-1Bs do not benefit from dual intent that is described hereafter. However, for a Singaporean or Chilean who will work in the private sector and is impacted by the cap limits for all new H-1B's, discuss with your private sector employer or attorney.

Cost and fees: The basic H-1B application fee is \$460 and must be submitted with all petitions. New H-1B's or change of employer petitions must also include the \$500 anti-fraud fee. And, private companies must also pay a "training fee" of \$1,000 or \$1,500 with each petition. University employers (including Carnegie Mellon) are not required to pay the "training fee." In addition, premium processing is \$1,225; this service and fee are optional. Further, dependants already in the U.S. and wishing to change status to H-4, must submit the fee of \$290 with the Request for Change of Non-immigrant Status. NOTE: *The H-1B fee or fees are typically paid by the employer or department at CMU but there is no prohibition against the employee paying the application and premium processing fee; however, if the H-1B fee or fees are subtracted from the H-1B wage, the amount must not be less than the prevailing wage as determined in the LCA process (above.) Employers must pay the anti-fraud and training fees.* When an attorney is hired to process an H-1B petition, expect to pay more than \$1,000 in legal fees.

Who prepares the H-1B application? Private companies will typically use an in-house attorney or hire an immigration attorney to prepare the H-1B application. Most large universities, including Carnegie Mellon, have staff within the university who prepare the H-1B application.

### **Carnegie Mellon H-1B Details for Employees of Carnegie Mellon**

The LCA Process: At Carnegie Mellon, the Office of International Education (OIE), processes the Labor Condition Application (LCA) for *all* H-1B applications. OIE processes the LCA no matter if OIE will file the H-1B petition or if an outside attorney will file. OIE works with the hiring department and with Human Resources to file the LCA with the U.S. Department of Labor. By law, the wage which is paid to the H-1B employee must be (1) in line with the "actual wages" paid to other similarly employed persons in the department or (2) 100% or more of the "prevailing wage" in the region for that job, whichever is higher. The actual wage paid must be at or above 100% of the prevailing wage. The approved LCA is a required part of any H-1B petition.

H-1B application: OIE also prepares and submits the H-1B application for most departments on campus with the exception of Computer Science, Robotics, Software Engineering Institute, Tepper School, and others on a case-by-case basis. OIE staff work with a coordinator in each department who has detailed instructions on the H-1B process at Carnegie Mellon. The Foreign Scholar Coordinator in the department is responsible for gathering all relevant materials and for submitting a complete H-1B packet to OIE.

## Other important information

Portability: An H-1B employee may change employers after the new employer has filed an H-1B petition to the proper USCIS Service Center on behalf of the employee. At Carnegie Mellon, the USCIS Receipt Notice must be received at Carnegie Mellon before a new employee may move from a previous employer and begin employment at the University.

The H-1B visa stamp and travel in H-1B status: If an employee received H-1B status for the first time when already present in the U.S., the new H-1B status is granted at the time that the Approval Notice is received from USCIS. However, this does not impact or change the actual visa stamp in the passport. So, if the person in H-1B status travels outside of the U.S., s/he will need to visit a U.S. consulate to apply for the H-1B stamp in the passport for purposes of re-entry to the U.S. The same is true for H-4 dependants. Refer to Page 2 of this handout regarding the DOS PIMS system and implications for the H-1B visa application. As with other non-immigrant statuses, a new H-1B stamp must be obtained at a U.S. consulate outside of the U.S. Read OIE's "Travel Information for Js and H-1Bs" for additional details.

Tax implications: For international persons in F or J status who are non-residents for tax purposes obtaining H-1B status will change the tax and tax-filing obligation. An H-1B worker is a "resident for tax purposes" and is required to pay social security and FICA tax. However, there may also be some tax benefits to the H-1B worker – for instance, a married H-1B can claim the spouse and child/children as dependants for a positive tax benefit. H-1Bs may speak with a qualified tax preparer.

Grace period: There is no "grace period" in H status, unlike the 30-day grace period for Js and the 60-day grace period for Fs. Therefore, if and when a job ends, so too does the status. This can be problematic if an H-1B suddenly quits or loses employment. An H-1B worker should speak with an immigration attorney to understand the options – if possible, explore the options before employment ends, not after!

Dual intent: H-1B status carries "dual intent." This is a distinct difference from F and J status. "Dual intent" implies that a person may choose to return to the home country or may choose to move into permanent residency (or immigrant) status in the U.S. This issue is helpful when applying for the visa stamp overseas; unlike an F student or J researcher, an H-1B will no longer need to "prove" the intention to return home after program completion. This "dual status" is also the reason that OIE and attorneys advise a person to obtain H-1B status before applying to U.S. permanent residency.

Dependents. A spouse and minor, unmarried children (under age 21) may be in H-4 status (unless they hold their own primary visa status, such as a spouse who is in full-time F-1 student status.) Generally, information about dependant family members who will change status is included with the H-1B application. For family members already in the U.S., the family will complete Form I-539, Request for Change of Non-immigrant Status, submit copies of the I-94 card(s), and the fee of \$370 in addition to other H-1B fees. Dependants in H-4 status may study part- or full-time but may not be employed for compensation by U.S. employer. If the H-1B status is approved, the dependants will receive a separate Approval Notice for H-4 status. In Pittsburgh, it often occurs that the H-4 dependant is notified of the Approval shortly *before* the H-1B primary status holder.

## Additional Resources

- USCIS website: Visit the USCIS website for additional information and forms: [www.uscis.gov](http://www.uscis.gov)
- U.S. Department of State: For information on the waiver of J-1 home residency requirements or applying for U.S. visa, visit the U.S. Department of State website: [www.state.gov](http://www.state.gov)
- The Office of International Education (OIE): [www.cmu.edu/oie/](http://www.cmu.edu/oie/)

\*You may make an appointment to meet with an OIE Advisor by calling OIE at x85231 or 412-268-5231.