H-1B REQUEST

• OIP will need to receive the following items:
  1. EMPLOYEE QUESTIONNAIRE
  2. DEPARTMENT QUESTIONNAIRE
  3. DEEMED EXPORT QUESTIONNAIRE
  4. POSITION DESCRIPTION

• Departments should initiate the request process 6 to 8 months in advance.
H-1B EMPLOYEE QUESTIONNAIRE

H-1B PETITION
EMPLOYEE QUESTIONNAIRE CHECKLIST

Please submit the following items to the Office of International Programs. When providing copies of documents, please make color copies if possible.

- Completed H-1B Employee Questionnaire
- Copies of current and previous status documents
  - F-1 Status:
    - Copies of most recent and previous I-20 documents
    - EAD card, if applicable
    - If currently on OPT or STEM OPT, please include OPT employment proof i.e. 2 most recent paystubs
  - J-1/F-2 Status:
    - Copies of most recent and previous DS-2019 and 68 documents
    - Copies of J-1 Waiver documentation, if you were subject to the 212(e), two-year home stay requirement
    - I-797 Waiver Approval Notice issued by USCIS
    - U.S. Department of State Favorable Recommendation Letter
  - H-1B Status:
    - Copies of H-1B/1-797 approval notice
    - Copies of 2-3 most recent paystubs
- Color copies of passport identification pages
- Color copies of visa stamps and CBP arrival date stamp in passport
- Copy of I-94
- Copies of I-140 Receipt or Approval, if applicable
- Copies of I-485 Receipt Notice, if applicable
- Copy of driver’s license
- Copies of all degree certificates and transcripts
  - If your degree was earned outside of the United States, please include copies of credentials evaluation reports obtained through a U.S. evaluation service
    - If you currently do not have a credentials evaluation report, please request a report from either FCSA (www.foreigncredentials.org) or another U.S. evaluation service provider.
  - If degree certificates and transcripts are not in English, please include copies of certified English translations.
- Copies of professional licenses, if applicable
- Copy of a CV or Resume
- If you have dependents who need H-4 status:
  - If your dependents are currently in the United States:
    - Completed I-539 Application (http://www.uscis.gov/sites/default/files/I-539.pdf)
    - I-539 Filing Fee (check made payable to U.S. Department of Homeland Security)
    - Copies of passport identification pages for all dependents
    - Copies of I-94 for all dependents
    - Copies of visa stamps for all dependents
    - Copies of status documents (i.e., I-797 Approval Notice, DS-2019, I-20, etc.)
    - Copy of marriage certificate (if not in English, please include a copy of a certified English translation)
    - Copy of children’s birth certificates (if not in English, please include a copy of a certified English translation)
    - Letter of request from dependent to USCIS containing the following:
      - Address, telephone number and date
      - Indicate why you are requesting change of status
      - Letter from H-1B applicant confirming his/her ability to provide financial support for dependents
      - Include proof of financial support
  - If your dependents are outside of the United States:
    - There is no need to complete the I-539 Application. The dependents will have to apply for H-4 visas directly at a U.S. Consulate/Embassy closest to their place of residence. Please visit www.usembassy.gov for more information.

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H-1B EMPLOYEE QUESTIONNAIRE

PROCESSING INFORMATION

The H-1B process has the following components:

1. U.S. Department of Labor determination of the Prevailing Wage (1.3 months)
2. U.S. Department of Labor approval of the Labor Condition Application (LCA) (7 days)
3. Review and approval of H-1B petition by the U.S. Citizenship and Immigration Services (USCIS) (2.3 months)

Pursuant to 8 C.F.R. §214.2(h)(5)(ii)(B), the H-1B petition may not be submitted to the USCIS more than six months prior to the employment start date. Due to the various components involved, the amount of time required to prepare each petition can vary. On average, it can take anywhere between 3-6 months to process. This depends on the priority level of the case and if we receive all of the information needed in order to proceed with filing the H-1B petition.

The USCIS does offer premium processing options. Unlike the filing fees which must be paid by the hiring department, the premium processing fee can be covered either by the employee or the hiring department. The fee is an additional $225. The premium processing option can guarantee that the H-1B petition will be reviewed within 15 business days. The USCIS is not required to approve the case in 15 days, but they must review it or issue a Request for Evidence if they have questions about the petition. Premium processing may be requested at the time of filing a case or may be “converted” to premium processing after filing.

If you are not currently in H-1B status, the H-1B petition must be APPROVED before your current work authorization expires so that you can continue to have uninterrupted work authorization for your employer.

If you are currently in H-1B status and either (1) changing H-1B employers, or (2) presently working for KUMC and need to file an extension of your H-1B, then the case only needs to be received by the USCIS before your current H-1B expires to have automatic work authorization for up to 240 days. Additionally, if you are changing H-1B employers, we must file the H-1B change of employer petition with the USCIS before you can start working.

TRAVEL INFORMATION

IF YOU ARE NOT PRESENTLY IN H-1B STATUS, international travel while your case is pending will result in a DENIAL of the H-1B petition and require you to leave the United States. If you must travel, please contact the Office of International Programs immediately to discuss premium processing and/or consular processing options.

IF YOU ARE CURRENTLY IN H-1B STATUS, you must be physically present in the United States on the day your H-1B extension petition is filed. While the USCIS allows you to travel internationally after your case is received for filing, to return to the United States (1) you must have an unexpired H-1B visa stamp in your passport, and (2) if your case has been approved during your international travel, you should have the original, new approval notice with you. If you plan to travel internationally while your H-1B extension is pending, please contact the Office of International Programs.

I have read and understood the processing and travel information provided above.

Signature_________________________ Date____________________

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H-1B EMPLOYEE QUESTIONNAIRE

REQUEST FOR PREMIUM PROCESSING

Please complete this form if you would like to request premium processing of your petition. Attach this form with the H-1B Employee Questionnaire if the request is being made at the time of filing. If you would like your H-1B case to be “converted” to premium processing after filing, please email this form directly to the Office of International Programs.

Family Name (Last Name): ____________  Given Name (First Name): ____________  Full Middle Name: ____________

Current Address (street number and name, city, province/state, and zip code):

Contact Information
Email Address: ____________  Phone Number: ____________

YES, I would like to request premium processing and I will enclose a check for $1225 payable to the “U.S. Department of Homeland Security”.

Signature____________________________________  Date________________________

WHO CAN PAY FOR PREMIUM PROCESSING?

1. THE HIRING DEPARTMENT IS NOT REQUIRED TO PAY FOR THIS FEE UNLIKE THE REGULAR FILING FEES.

2. IF THE EMPLOYEE WISHES TO EXPIDITE THE PROCESSING OF AN H-1B DUE TO EITHER PERSONAL REASONS (I.E. TRAVEL PLANS), HE OR SHE CAN COVER THE PREMIUM PROCESSING FEE.

3. IF THE EMPLOYER WOULD LIKE TO HAVE THE EMPLOYEE START AS SOON AS POSSIBLE, THEN THE EMPLOYER SHOULD BE RESPONSIBLE FOR THE PREMIUM PROCESSING FEES.
H-1B DEPARTMENT QUESTIONNAIRE

H-1B PETITION
DEPARTMENT QUESTIONNAIRE CHECKLIST

Please submit the following items to the Office of International Programs. When providing copies of documents, please make color copies if possible.

- Completed H-1B Department Questionnaire
- Position Description
- Offer Letter
- Completed Deemed Export Questionnaire
- Filing Fees (required for hiring department)
  - If this is an initial or a new employer H-1B petition, the filing fees are the following:
    - $500 Anti-Fraud Fee***
    - $325 Filing Fee***
    - The anti-fraud fee and filing fee have to be on separate checks. Both should be made payable to **U.S. Department of Homeland Security**.
  - If this is an extension or an amendment H-1B petition, the filing fees are the following:
    - $325 Filing Fee made payable to **U.S. Department of Homeland Security**
- Premium Processing Option (for more information on premium processing please reference the “Processing Information” section).
  - $1225 Premium Processing Fee
    - Check should be made payable to the **U.S. Department of Homeland Security**
  - Completed Premium Processing Request Form

- Office of International Programs Processing Fee
  - OIP Processing Fee is $975
    - OIP Premium Processing Request Fee is an additional $525
  - **OIP Processing Fees will go into effect January 1, 2015**
    - The OIP processing fees will apply to H-1B requests that have a start date after January 1, 2015.
    - For extension cases, the fees will apply to H-1B requests that have an H-1B end date after January 1, 2015.

- Signed acknowledgement of the Processing and Travel Information
- Signed acknowledgement of the Information for the Hiring Departments
- Signed acknowledgement of the Actual Wage Information
- Signed acknowledgement of the Prevailing Wage Information
**OFFICE OF INTERNATIONAL PROGRAMS PROCESSING FEES**

*Effective January 1, 2015,* the Office of International Programs (OIP) will implement the following processing fees for H-1B visa requests. Once OIP starts processing H-1B request, OIP fees will not be returned or refunded.

<table>
<thead>
<tr>
<th>OIP Processing Fee</th>
<th>$975</th>
</tr>
</thead>
<tbody>
<tr>
<td>OIP Premium Processing Request Fee</td>
<td>$525</td>
</tr>
<tr>
<td>- Applies to H-1B requests submitted to OIP 45 days or less from the prospective H-1B employee’s start date.</td>
<td></td>
</tr>
<tr>
<td>- Guarantees H-1B petition processing by OIP and submission to USCIS within 30 days of request receipt.</td>
<td></td>
</tr>
</tbody>
</table>

The OIP fees are in addition to the H-1B filing fees required by the U.S. Department of Homeland Security.

The OIP processing fees will apply to H-1B requests that have a start date after January 1, 2015. For extension cases, the fees will apply to H-1B requests that have an H-1B end date after January 1, 2015.

Please contact the Office of International Programs for any questions or concerns.
H-1B DEPARTMENT QUESTIONNAIRE

PROCESSING INFORMATION

The H-1B process has the following components:

1. U.S. Department of Labor determination of the Prevailing Wage (1-3 months)
2. U.S. Department of Labor approval of the Labor Condition Application (LCA) (7 days)
3. Review and approval of H-1B petition by the U.S. Citizenship and Immigration Services (USCIS) (2-3 months)

Pursuant to 8 C.F.R. §214.2(h)(3)(i)(B), the H-1B petition may not be submitted to the USCIS more than six months prior to the employment start date. Due to the various components involved, the amount of time required to prepare each petition can vary. On average, it can take anywhere between 3-6 months to process. This depends on the priority level of the case and if we receive all of the information needed in order to proceed with filing the H-1B petition.

The USCIS does offer premium processing options. Unlike the filing fees which must be paid by the hiring department, the premium processing fee can be covered either by the employee or the hiring department. The fee is an additional $1225. The premium processing option can guarantee that the H-1B petition will be reviewed within 15 business days. The USCIS is not required to approve the case in 15 days, but they must review it or issue a Request for Evidence if they have questions about the petition. Premium processing may be requested at the time of filing a case or may be "converted" to premium processing after filing.

If the prospective employee is not currently in H-1B status, the H-1B petition must be APPROVED before his or her current work authorization expires so that he or she can continue to have uninterrupted work authorization.

If the prospective employee is currently in H-1B status and either (1) changing H-1B employers, or (2) presently working for KUMC and needs to file an extension of the H-1B, then the case only needs to be received by the USCIS before the current H-1B expires to have automatic work authorization for up to 240 days beyond the current end date. Additionally, if the employee is changing H-1B employers, we must file the H-1B change of employer petition with the USCIS before the employee can start working at KUMC.

TRAVEL INFORMATION

If the prospective employee is not presently in H-1B status and travels internationally while the H-1B petition is pending adjudication with the USCIS, this will result in a DENIAL of the H-1B petition and require the employee to leave the United States. If the prospective employee must travel, please contact the Office of International Programs immediately to discuss premium processing and/or consular processing options.

If the prospective employee is currently in H-1B status, he or she must be physically present in the United States on the day the H-1B extension petition is filed. While the USCIS allows international travel after the case is received, nonetheless, to return to the United States (1) the employee must have an unexpired H-1B visa stamp in his or her passport, and (2) if the new H-1B case has been approved during the employee’s international travel, the employee must have the new approval notice when crossing the U.S. border. If an employee plans to travel internationally while his or her H-1B extension is pending, please contact the Office of International Programs.

ACKNOWLEDGMENT

I have read and understood the processing and travel information provided above.

Department Contact/Supervisor Signature: ___________________________ Date: ___________________________

Print Name: ___________________________
H-1B DEPARTMENT QUESTIONNAIRE

INFORMATION FOR THE HIRING DEPARTMENT

PREVAILING WAGE
The prevailing wage is defined by the U.S. Department of Labor as "the average wage paid to similarly employed workers in a specific occupation in the area of intended employment". The employer is required by federal law to pay an H-1B employee the prevailing wage or higher. It has to be determined prior to the submission of an H-1B petition with the USCIS and at the time the Labor Condition Application (LCA) is filed with the Department of Labor. The prevailing wage must be "based on the best information available". KUMC utilizes OFLC National Processing Center (NPRC) wage data and wage determinations issued by the National Prevailing Wage Center (NPWC), which are sources permitted under U.S. federal regulations (20 C.F.R. Part 655.731(a)(2)). NPWC is also considered a "safe harbor" source which means that the Department of Labor considers their wage determinations as correct and legitimate.

ACTUAL WAGE
The actual wage is the "wage rate paid by the employer to all other individuals with experience and qualifications similar to those of the H-1B nonimmigrant, for the specific employment in question" (20 C.F.R. Part 655.731(a)(1)). Please note that the actual wage is not the salary offered to the H-1B employee. Instead, this is a "listing of wages paid" to similarly employed workers. In determining similarly employed workers, the following factors should be considered:

- Experience
- Qualifications
- Education
- Job Duties
- Specialized knowledge
- Other "legitimate business factors"

The hiring department should be maintaining documentation that shows "full, clear explanation of the system that the employer used to set the "actual wage" the employer has paid or will pay workers in the occupation for which the H-1B nonimmigrant is sought" (20 C.F.R. § 655.731(b)(2)). The actual wage determination should be consistent.

H-1B EMPLOYEE’S WAGE
Employers should consider both the prevailing wage and the actual wage when determining an H-1B employee’s wage or salary. The employer should "pay the higher of the two figures: the actual wage rate or the prevailing wage rate" (20 C.F.R. § 655.716; 20 C.F.R. § 655.731).

DEEMED EXPORT
Each H-1B employee must have a deemed export review conducted by the KU Export Controls and Secure Research Office prior to the submission of an H-1B petition. Deemed export is defined as technology or "source code" released to a foreign national that are under export control regulations. H-1B employees’ activities may become classified as deemed export which would require special licenses. Nonetheless, this determination is made by the KU Export Controls and Secure Research investigators.

TERMINATION OF AN EMPLOYEE
If the employer terminates an H-1B employee at any time during his or her H-1B validity period for any reason, the employer is required to cover "reasonable costs of return transportation to the H-1B worker's last place of residence abroad" (20 C.F.R. § 655.731(c)(10)). Communication confirming the termination of the employee should be sent to the Office of International Programs so that we can proceed with withdrawing and closing the H-1B with the USCIS.

EMPLOYMENT CHANGES
If the hiring department is considering making any "material changes" to an H-1B’s employment, the Office of International Programs should be contacted immediately. Material changes include the following:

- Significant changes in duties
- Change in position title
- Promotion
- Changes in salary

The Office of International Programs is required to submit an Amendment H-1B petition to the USCIS before any of these material changes take effect. Once the USCIS receives the Amendment petition, the hiring department may then proceed with implementing and finalizing these changes.

END OF EMPLOYMENT
If an employee voluntarily terminates his or her own employment, the hiring department should forward to the Office of International Programs communication that would confirm the employee’s last day. Upon the receipt of this confirmation, our office will proceed with withdrawing and closing the H-1B with the USCIS. When an H-1B employee voluntarily terminates his or her own employment, the hiring department is not required to cover the reasonable costs to transportation home.

ACKNOWLEDGEMENT
I have read and understood the information for hiring departments provided above.

Department Contact/Supervisor Signature: __________________________ Date: __________________________
Print Name: __________________________
H-1B DEPARTMENT QUESTIONNAIRE
INFORMATION FOR THE HIRING DEPARTMENT

• TERMINATION OF EMPLOYEE
  – Return transportation

• EMPLOYMENT CHANGES
  – Significant changes in duties
  – Change in position title
  – Promotion
  – Changes in salary
PART 2: INFORMATION ABOUT THE JOB AND THE H-1B EMPLOYEE

Type of H-1B Requested

☐ Initial/New Employment
Prospective employee is currently in another visa status i.e. J-1, J-2, or F-1, and this will be a new or first H-1B for him or her.

☐ Extension
Employee currently holds H-1B status with KUMC and requires an extension of his or her visa status.

☐ Amendment
Employee currently holds H-1B status with KUMC and requires the submission of an amendment to reflect potential "material changes" to his or her employment. Material changes include significant changes in duties, changes in title, increase in salary, and/or promotion. An amendment petition has to be received by the UScis before these material changes take effect.

☐ New Employer
Prospective employee currently holds H-1B status with another employer and will be transferring to KUMC. Upon the timely filing of the new H-1B from KUMC, the employee will have “portability” which means he or she can continue working at KUMC while the H-1B case is pending approval with the USCIS.
**H-1B DEPARTMENT QUESTIONNAIRE**

**PART 3: ACTUAL WAGE INFORMATION**

Please list employees who have the same or similar:

- Job title
- Duties
- Qualifications
- Education
- Specialized knowledge
- Other "legitimate business factors"

These employees must be either in your department, lab, or center. Please list the lowest and highest salaries paid and provide the following information:

<table>
<thead>
<tr>
<th>Employee</th>
<th>Salary</th>
<th>Education</th>
<th>Years of Experience</th>
<th>Notable Achievements Justifying Salary</th>
<th>Other &quot;legitimate business factors&quot; (i.e. salary restrictions by grant, etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee with lowest Salary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee with highest Salary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please indicate the total number of employees in the department, lab, or center with the same job title as well as similar duties, qualifications, education, specialized knowledge, and other "legitimate business factors":


**PLEASE NOTE:** While rare, the U.S. Department of Labor may review "actual wages" to verify that the H-1B worker is not paid LESS than the wage level paid to other individuals with similar experience and qualifications. If U.S. workers performing the same job are being paid MORE than the H-1B worker, please confirm the following:

If required to do so, the hiring department can provide documentation to show that the higher paid workers have different salaries based on education, experience, qualifications, job responsibilities and function, specialized knowledge, or other legitimate business factors.

Yes [ ] No [ ]

Department Contact/Supervisor Signature: ___________________________ Date: ____________

Print Name: ___________________________
ACTUAL WAGE

• “wage rate paid by the employer to all other individuals with experience and qualifications similar to those of the H-1B nonimmigrant, for the specific employment in question”

• When determining the employee’s wage have to look at both the prevailing wage and the actual wage
  – Should pay the higher of the two
PART 4: PREVAILING WAGE INFORMATION

As part of the process, the Office of International Program must obtain a prevailing wage from the U.S. Department of Labor. We will make an estimate based on U.S. Department of Labor wage data and communicate any wage issues that may arise.

The prevailing wage takes anywhere between one to three months to be determined. If the H-1B is needed sooner and the wage comes back higher, KUMC policies require that the wage be increased to equal or be higher than the determined prevailing wage. Additionally, the hiring department must be willing to pay the higher of the two wage rates: the prevailing wage and the actual wage.

Please indicate if you agree to pay the higher of the prevailing wage or the actual wage rate, or if you prefer to delay the H-1B filing until any wage issues are determined.

☐ The hiring department agrees to pay the higher of the prevailing wage or the actual wage rate.

☐ The hiring department prefers to wait to prepare the H-1B until the prevailing wage is issued by the U.S. Department of Labor.

Department Contact/Supervisor Signature: ____________________________ Date: ______________

Print Name: ____________________________
PREVAILING WAGE

• Minimum salary that can be paid to an H-1B employee.
• Must be determined at the time of filing LCA and H-1B petition
• OES Wage Data/FLC Data Center
• “Safe-Harbor”
  – Prevailing wage issued by National Prevailing Wage Center (NPWC)
LABOR CONDITION APPLICATION (LCA)

- Filed with the U.S. Department of Labor.
- Filed no sooner than 6 months before H-1B start date.
- Included with H-1B petition.
- Employer attestation about H-1B’s wages and working conditions.
- A posting of the LCA must be made public for a minimum 10 days.
“DOL regulations require the employer to make a filed LCA and certain supporting documentation available for examination at the employer's principal place of business in the United States or at the place of employment, within one day of filing the LCA.”

Public Access Files must be maintained for all H-1B employees.

Supporting documentation includes:

- Certified LCA
- Explanation of the Actual Wage determination
- Explanation of the Prevailing Wage determination
- Documentation showing the wage rate to be paid
OVERVIEW OF H-1B PROCESS

- Prevailing Wage Determination (PWD), 1-3 months
- Labor Condition Application (LCA), 7 days
- LCA Public Posting, 10 business days
- Review and approval of H-1B petition by the USCIS, 2-3 months
QUESTIONS?