H-1B VISA GENERAL INFORMATION

An H-1B visa is a temporary, nonimmigrant work visa. It requires direct employer sponsorship for an international employee. The H-1B visa allows international employees to work in the United States in a "specialty occupation" which is defined as having "theoretical and practical application of a body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." CFR 214.2(h)(4)(ii)

H-1B STATUS:

- H-1B visa status can initially be granted for up to 3 years and then extended for an additional 3 years.
- Maximum Duration of Stay is 6 years
- Exception to the 6-year maximum duration exists when an H-1B employee has an approved or pending I-140 petition for permanent residency.
  - In accordance with rule AC 21 (American Competitiveness in the Twenty-First Century Act of 2002), an H-1B extension can be requested 1 year beyond the 6-year max if the H-1B employee has a pending I-140 petition or up to 3 years beyond the 6-year max if the H-1B employee has an approved I-140 petition.
- H-1B status is contingent upon continued employment with the petitioner, The University of Kansas Medical Center (KUMC). This means that should the H-1B employment with KUMC cease at any point, the H-1B status will end with the last date of employment.

TIMELINE:

- The H-1B petition process should be started at least 6 months prior to the H-1B start date.
  - Pursuant to 8 C.F.R. §214.2(h)(9)(i)(B), the H-1B petition may not be submitted to the USCIS more than six months prior to the employment state date.
- Due to the various steps involved, the amount of time required to prepare each petition can vary and would depend on the priority level of the case.
  - On average, it can take between 4-6 months to process (includes petition preparation and USCIS adjudication).

H-1B CASE TYPE REFERENCE:

| INITIAL-COS | An initial KUMC H-1B request for an international currently in the United States under a different visa category and thus requesting a Change of Status (COS). |
| INITIAL-COE-PORTABILITY | An initial KUMC H-1B request for an international currently in the United States under H-1B status with a different employer. An international is thus requesting a change of employer and will have portability or continued work authorization for up to 240 days as long as the KUMC sponsored H-1B is filed in a timely manner (a timely filing is at any point prior to the expiration of the current H-1B or last date of employment). |
| INITIAL-CONSULAR | An initial KUMC H-1B request for the prospective international employee currently outside the United States and thus requesting Consular processing upon USCIS’s adjudication of the H-1B petition to enter the United States in H-1B status. |
| EXTENSION-PORTABILITY | A request of an extension of KUMC sponsored H-1B petition. Albeit treated as a regular H-1B filing, extension cases allow international employees to have portability or continued work authorization for up to 240 days as long as the KUMC extension is filed in a timely manner (a timely filing is at any point prior to the expiration of the current H-1B). |
| AMENDMENT | When a material change occurs in an international employee's position (i.e. significant changes in duties, going from part-time to full-time, etc.), KUMC is required to file an amendment petition to report and document these changes with the USCIS prior to these changes taking effect. |

H-1B PETITION PROCESS OUTLINE FOR ALL CASE TYPES:

To initiate an H-1B petition regardless of the case type, the Office of International Programs must receive the following items:

1. Completed Employee Questionnaire and Supporting Documents
2. Completed Department Questionnaire and Supporting Documents
3. Completed Deemed Export Questionnaire
4. Position Description
5. Offer Letter or Letter of Support Confirming the Continuation of Employment
6. **Filing Fees for the U.S. Department of Homeland Security**
   - **U.S. Department of Homeland Security Fees (paid by hiring department)**

<table>
<thead>
<tr>
<th>H-1B CASE TYPE</th>
<th>FEES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial-COS, Initial-COE-Portability, Initial-Consular</td>
<td>To U.S. Department of Homeland Security:</td>
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<tr>
<td></td>
<td>- $500 Anti-Fraud Fee***</td>
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<tr>
<td></td>
<td>- $325 Filing Fee***</td>
</tr>
<tr>
<td>Extension-Portability, Amendment</td>
<td>To U.S. Department of Homeland Security:</td>
</tr>
<tr>
<td></td>
<td>- $325 Filing Fee</td>
</tr>
</tbody>
</table>

***The anti-fraud fee and filing fee have to be on separate checks.***

7. **Processing Fees for the Office of International Programs**
   - The OIP fees are in addition to the H-1B filing fees required by the U.S. Department of Homeland Security.

<table>
<thead>
<tr>
<th>OIP PROCESSING FEES</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>OIP Processing Fee</td>
<td>$800</td>
</tr>
<tr>
<td>OIP Premium Processing Request Fee</td>
<td>$250</td>
</tr>
</tbody>
</table>

  - Applies to H-1B requests submitted to OIP 45 days or less from the prospective H-1B employee’s start date.
  - Guarantees H-1B petition processing by OIP and submission to USCIS within 30 days of request receipt.

8. **USCIS Premium Processing Option**
   - Cost: $1225 (paid to U.S. Department of Homeland Security)
   - Guarantees H-1B Petition will be reviewed within 15 business days of receipt.
     - 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.
     - Can be requested at any time.
   - Premium processing may be requested at the time of filing a case or may be “converted” to premium processing after filing.
   - Can be covered either by the employee or hiring department.
     - KUMC policy requires that if the employer wishes for the employee to start by a specific date, then the employer is responsible for covering the premium processing fee.

**H-1B Petition Process**

- **OIP receives completed employee, department, deemed export questionnaires.**
- **Step 1: Prevailing Wage Determination (PWD); Actual Wage Determination**
- **Step 2: Labor Condition Application (LCA) Submission to the U.S. Department of Labor (DOL) for Certification (takes 7 days)**
- **Step 3: OIP finalizes H-1B petition packet and sends it to the USCIS**
- **Step 4: USCIS review H-1B petition (Regular Process=2-3 months; Premium Processing=reviewed within 15 days)**

- **Prevailing Wage Determination (PWD):**
  - 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

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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 (NPC) 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 questions” (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.

**Note:** 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. § 655.715; 20 C.F.R. § 655.731).

### Labor Condition Application (LCA):

- Employers must file a LCA and it must be approved or certified by the Department of Labor prior to the submission of the H-1B. In the LCA, the employer makes attestations on wages, working conditions, strike/lockout/work stoppage, and notice.

### 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 then require special licensure. Nonetheless, this determination is made by the KU Export Controls and Secure Research investigators.

### WORK AUTHORIZATION STATUS DURING USCIS ADJUDICATION OF H-1B:

<table>
<thead>
<tr>
<th>Case Type</th>
<th>H-1B Petition Must Be Approved and Original Approval Notice Received Prior to Starting Work (Yes/No)</th>
<th>Portability Applies (Portability/continued work authorization) (Yes/No)</th>
<th>240-day Portability Letter Issued (Yes/No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial-COS</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Initial-COE-Portability</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Initial-Consular</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Extension-Portability</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
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<tr>
<td>Amendment</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>

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2 NAFSA Adviser’s Manual, Chapter 7.3 “The actual wage rate.”
If the prospective H-1B employee is **not** currently in H-1B status, the H-1B petition must be **APPROVED** before the employee’s current work authorization expires to have continued or uninterrupted work authorization.

If the prospective H-1B 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. Additionally, when changing H-1B employers, we must file the H-1B change of employer petition with the USCIS before the H-1B’s current employer’s last date in order for the employee to start working at KUMC.

### TRAVEL INFORMATION:

<table>
<thead>
<tr>
<th>CURRENTLY NOT IN H-1B STATUS</th>
<th>CURRENTLY IN H-1B STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ International travel while the prospective H-1B employee’s case is pending with the USCIS will result in a DENIAL of the H-1B petition.</td>
<td>▪ The H-1B employee must be physically present in the United States on the day the H-1B extension petition is filed.</td>
</tr>
<tr>
<td>▪ <strong>If the H-1B employee must travel, please contact the Office of International Programs immediately to discuss premium processing and/or consular processing options.</strong></td>
<td>▪ While the USCIS allows for international travel after an H-1B case is received by the USCIS, to return to the United States</td>
</tr>
<tr>
<td></td>
<td>▪ (1) the H-1B must have an unexpired H-1B visa stamp in passport, and</td>
</tr>
<tr>
<td></td>
<td>▪ (2) if the H-1B’s case is approved during the international travel, the H-1B should have the original approval notice when applying for a new visa stamp or reentering the United States.</td>
</tr>
<tr>
<td></td>
<td>▪ <strong>If you plan to travel internationally while your H-1B extension is pending, please contact the Office of International Programs.</strong></td>
</tr>
</tbody>
</table>

### U.S. DRIVER’S LICENSE:

- Can be obtained with an original status document such as the I-797A H-1B approval notice, passport, and I-94 record.
- Driver’s license’s validity dates will reflect your status’s validity dates.

While OIP strives to take into consideration driver’s license expiration dates and to ensure that the prospective H-1B employee receives the necessary status document to obtain or renew a driver’s license. However, our primary objective is to ensure that the H-1B employee is in lawful status in the United States. Therefore, please be aware that in case your H-1B petition is still pending beyond your current visa status expiration date, you may be able only to obtain a temporary driver’s license. To do so, please contact OIP for the necessary verification letters to assist you with this process. Nonetheless, it is ultimately at the discretion of the DMV to issue you a temporary license.