

H-1B Overview

H-1B Specialty Workers are authorized to work in specialized fields for a maximum period of six years. The University of South Alabama may sponsor an employee for H-1B authorization for a period of up to three years at a time. H-1B workers must be paid a salary that equals at least the US Department of Labor determined prevailing wage. To sponsor an H-1B worker, the University of South Alabama, through Office of Immigration and International Admissions, must file petitions with the US Department of Labor (DOL) and the US Citizenship and Immigration Services (USCIS) indicating that the University will appoint and pay the individual the prevailing wage.

Eligibility

In general, to be eligible for H-1B sponsorship, the position must be full-time and require a minimum of a bachelor's degree and the sponsored employee must meet that requirement and possess any necessary licensure. Some individuals, even if they meet the degree and licensure requirements, may not be eligible for H-1B status based on their immigration history. For example, those who have already used the six-year limit on H-1B status are ineligible for an additional period of H-1B status until they have resided and been physically outside of the U.S. for at least one year. Similarly, those who are subject to the two-year home residency requirement based on their current or prior J-1/J-2 Exchange Visitor status are ineligible for H-1B status until they have either fulfilled the requirement or obtained a waiver through the Department of State and USCIS. A person for whom a department wishes to sponsor an H-1B should contact Office of Immigration and International Admissions to discuss his or her eligibility for an H-1B visa.

Prevailing Wage

In order to sponsor an employee for an H-1B visa, the University must pay at least the *prevailing wage* or the *actual wage* (the rate paid to similarly situated employees), whichever is higher. The US Department of Labor calculates the prevailing wage as the average salary or wage for similarly employed workers in the area of intended employment. If this prevailing wage exceeds the amount the department wishes to pay the employee, then the University cannot proceed with the H-1B petition. In this case, departments should consult with Office of Immigration and International Admissions about other options for visa sponsorship.

Processing Times – Plan up to 6 Months in Advance

Because USCIS H-1B processing times vary from 8-9 months, the Office of Immigration and International Admissions can only provide an *estimate* of the timing for a particular petition. We recommend that departments initiate an application as early as 6 months before the desired H-1B start date, which is the earliest that USCIS will accept an H-1B petition. Expedited processing, or “premium processing,” is available for a \$1,410 fee; this guarantees a decision by USCIS within 15 calendar days. The Office of Immigration and International Admissions requires at least one month to process and submit an H-1B petition from the time the department and individual submits all required documents.

Required Fees

Departments are required to pay certain required processing fee(s) for their employee's H-1B petition. The immigration attorney handling fee is approximately \$2,000 depending on the attorney the department chooses (see below for University-approved immigration attorney options). The USCIS basic fee is the \$460 I-129 application fee. In addition, departments must pay a \$500 anti-fraud fee for initial H-1B petitions and for cases in which USA is filing a change of employer petition (“portability”) for someone who already holds H-1B status with another employer. Extension petitions do not require the anti-fraud fee. The employee cannot pay these fees.

Optional Fees

The department and/or individual may request Premium Processing (guaranteed 15 calendar day decision). The department or the individual, whichever the Premium Processing benefits, may pay the additional \$1,225 fee to USCIS. If the employee wishes to apply for immediate family members to change to H-4 dependent status within the U.S., he or she must pay the \$370 I-539 change-of-status fee and \$500 immigration attorney handling fee.

Changes in Terms of Employment or Termination

Departments *must* consult with the Office of Immigration and International Admissions prior to changing an H-1B’s terms of employment (including changes to job duties or department) to determine whether an amended petition is required.

Please inform the Office of Immigration and International Admissions immediately if an H-1B worker’s employment is terminated so that our office can notify the Department of Labor and USCIS to immediately withdraw the H-1B. Because H-1B status is an employment-based status, that status immediately ends upon termination. If the department terminates employment, the department **must** pay the reasonable cost of return transportation to the H-1B employee’s last place of foreign residence. **The department will continue to be liable for paying the individual’s full salary and benefits if the H-1B support is not withdrawn.**

H-1B Extensions

The process for requesting an extension of H-1B status is the same as for the initial period of H-1B employment. The extension petition must be filed prior to the current H-1B status end date to avoid interruptions in employment. The employee may continue to work for a period of 240 days while an extension petition is pending, as long as it is filed in a timely manner (e.g. filed before the current end date with a receipt notice from USCIS). **Please note:** An extension of H-1B status allows the employee to continue working in the U.S.; however, it does not extend his or her H-1B entry visa, which is required for re-entry into the U.S. after traveling abroad. If the H-1B employee wishes to travel outside the U.S. after the expiration date of his or her current entry visa, he or she must apply for a new entry visa at a U.S. Embassy.

H-1B Visas, Travel Information, and Possible Visa Delays

H-1B employees should contact the Office of Immigration and International Admissions for information on travel requirements. H-1B visa requirements can vary by consular location, therefore, please refer to the particular United States consulate/embassy that you will visit. A list of embassy websites is available at <http://www.usembassy.gov/>. Employees and departments should be aware that security clearances, which are part of visa processing, may delay an employee’s return to the U.S. to continue employment.

UNIVERSITY OF SOUTH ALABAMA APPROVED OUTSIDE IMMIGRATION COUNSEL	
The University of South Alabama uses select outside legal counsel for all employment-based, USA-sponsored H-1B filings. University departments <u>MAY NOT</u> hire an immigration attorney to file a USA employer-sponsored petition without approval of the sponsorship using this form. Departments with questions about the retention of immigration counsel to represent the University in the filing of an employer-sponsored H-1B petition may contact the Office of Immigration and International Admissions.	
Klari Tedrow Tedrow and Myers Immigration Law Group 2907 Central Avenue, Suit 109 Homewood, AL 35209 ktedrow@usimmigrant.net 205-871-8084	David Ware Ware Immigration 3850 North Causeway Boulevard, Suite 555 Metairie, LA 70002 www.david-ware.com/Contact.shtml Toll Free: 866-833-8308

DEPARTMENT PROCEDURES

1. Request H-1B processing (please complete Appendix A): To initiate the H-1B process, the department should complete the Appendix A section of this packet, providing details on the job position and a copy of the appointment/job offer letter (if already prepared). This information, the Office of Immigration and International Admissions will determine the prevailing wage as established by the U.S. Department of Labor. The other component of wage determination is the review of Actual Wages paid to employees within the department.

Once the Office of Immigration and International Admissions determines the prevailing wage and actual wage, we will consult with the department if it appears the offered salary does not meet the Department of Labor's wage requirement. The department must pay at least the prevailing wage or the actual wage (the rate paid to similarly situated employees), whichever is higher. If this minimum salary exceeds the amount the department wishes to pay the H-1B applicant, the Office of Immigration and International Admissions will consult the department about other options. The department might choose to increase the salary or explore other visa options for the applicant.

2. Complete the Deemed Export Form (please complete Appendix B). In support of your request for H-1B sponsorship, the Office of Immigration and International Admissions is required to certify on the USCIS I-129 petition whether or not a license for export controlled technology or technical data is necessary for the professor/researcher being sponsored. To facilitate this requirement, all host departments are required to complete an attestation as to whether or not the H-1B worker will require a license for export controlled technology or technical data.

3. Complete the H-1B Actual Wage Determination.

4. Send documents to the Office of Immigration and International Admissions: The H-1B Request (Appendix A), the Deemed Export Form (Appendix B), and the Actual Wage Determination may be sent as soon as they are complete. The LCA posting notice should be sent back to our office upon completion of the 10 day posting period. Please send all documents to Maurice Chavarry Sr. at the Office of Immigration and International Admissions Meisler Hall 2200.

5. Post the LCA Notice: The Department of Labor and H-1B petition procedures require employers to inform its workforce of its intention to hire an H-1B worker through the postings of two Labor Condition Applications (LCA) at the employer's location. To comply with this rule, Office of Immigration and International Admissions will send two copies of the LCA Notice via email to the hiring department to be posted in two conspicuous locations (i.e. break room, copy room, front office). This LCA must be posted for a minimum of 10 consecutive business days. A Notice of Filing and instructions for posting will be included with the LCA Notice. Upon completion of the necessary 10-day posting period, please complete the Notice of Filing by indicating the posting dates, the responsible individual, and sign the Notice at the bottom. Please return the completed notices to Maurice Chavarry Sr. via campus mail at Office of Immigration and International Admissions, Meisler Hall Room 2200. **The posting date/notices are necessary for the H-1B process to move forward.**

6. Process Check/Direct Pay Request for USCIS Fees (please see Appendix C).

PROSPECTIVE H-1B EMPLOYEE PROCEDURES

1. Provide immigration information and history (please complete Appendix D): Once the department initiates the H-1B sponsorship process by submitting the Appendix A forms and Appointment Letter, the Office of Immigration and International Admissions will contact the H-1B beneficiary to obtain the biographical information, immigration documents, proof of qualifications (diploma, CV, licenses), and family information (if applicable) required for the H-1B petition.

2. H-4 Dependent Sponsorship. If a prospective H-1B employee has dependent family members (spouse or children) whom the H-1B employee would like to sponsor for H-4 visa status, the H-1B employee will need to consult with the Office of Immigration and International Admissions about processing the H-4 visa support. For sponsorship of dependents that are already in the US to either extend or obtain H-4 status, the prospective H-1B employee will need to submit documents for concurrent filing with the H-1B petition. The immigration attorney handling fee is \$500. The USCIS H-4 petition fee is \$370. For dependents that are currently outside of the US and will enter the US in H-4 status at a later date, the Office of Immigration and International Admissions can advise on how they may obtain H-4 status abroad.

OFFICE OF IMMIGRATION AND INTERNATIONAL ADMISSIONS PROCESSING

After the department and foreign national submit the required paperwork, the Office of Immigration and International Admissions will proceed with the H-1B petition process as follows:

1. Prevailing Wage Determination with the U.S. Department of Labor
2. Complete and submit a Labor Condition Application for H-1B Non-Immigrants (Form ETA 9035) to the U.S. Department of Labor (approximately 7 business days for approval)
3. Department is sent a copy of the LCA to be posted for 10 days
4. Receive required signed posting notices from department
5. Complete the necessary forms and send the petition to the immigration attorney for processing
6. Petition is sent to USCIS for decision (approximately 8-9 months)

Upon receiving the Approval Notice (I-797) from the USCIS, the Office of Immigration and International Admissions will notify the employee via email. If the individual is abroad awaiting the approval notice in order to apply for an H-1B entry visa at a U.S. Embassy, the Office of Immigration and International Admissions will contact the department to discuss mailing options.

PART 2: CONTINUED

8. Absolute **MINIMUM** qualifications required to perform the duties/tasks of this position:
- a. Level of higher education required: Bachelor's Master's Doctorate Other _____
 - b. State license or certificate required?: Yes or No
 - c. Degree major(s)/specialty(ies) required: _____
 - d. Absolute **minimum** number of years of employment experience required for the position: _____
 - e. Other minimum requirements, if any: _____
 - f. Position's **minimum** required training and experience (other than that which would or could have been obtained during the normal course of the degree program listed above) Please quantify required training and experience in number of months/years (if none, please write none): _____

9. **MINIMUM** number of employees (not including students or grad assistants) the H-1B must supervise: _____
10. Is travel required? Yes or No
11. Are there any other working conditions that affect the rate of pay? Yes or No
- If yes, please explain: _____
12. Occupational title of the employee's immediate supervisor: _____
13. Number of workers filling same position: _____
14. Salary of worker(s) in same position: _____

PART 3: ACKNOWLEDGEMENT OF RESPONSIBILITY & LEGALLY BINDING EMPLOYER ATTESTATIONS

By signing below, I attest that the above information is true to the best of my knowledge. I can provide additional details pertaining to statements made regarding the actual wage for the occupation discussed if needed. I authorize the Office of Immigration and International Admissions to seek approval from the US Department of Labor and US Citizenship and Immigration Services for an H-1B temporary visa on behalf of the above named individual (in Part 2).

Furthermore, I attest that the University of South Alabama will comply with the following statements as required by the Immigration Act of 1990 and conforming regulations issued by the US Department of Homeland Security and Department of Labor. (*From US Immigration Service [8 CFR 214.2 (h)] & US Department of Labor [20 CFR Parts 655 and 656]*)

- 1) That the hiring department will pay the \$460 I-129 filing fee for H-1B sponsorship and subsequent H-1B extensions, the \$500 Anti-fraud Fee when petitioning for an initial H-1B, an H-1B change-of-status, or change of employer (all required by law), and the immigration attorney handling fees (University policy);
- 2) That the H-1B authorization is job-specific. Prior to making any changes to the alien employee's **salary, title, or duties**, the department will consult with Office of Immigration and International Admissions;
- 3) That the H-1B worker will be paid 100% of the actual or prevailing wage, **whichever is higher**.
- 4) That the H-1B worker will also be paid for non-productive time unless contract is for a specified time period common to the industry such as 9 month academic appointments;
- 5) That the H-1B worker will be offered benefits on the same basis as similarly employed US workers;
- 6) That the employment of H-1B workers will not adversely affect the working conditions of workers similarly employed in the area of intended employment;
- 7) That on the date this form is signed and submitted, there is no strike, lockout or work stoppage in the course of a labor dispute in the occupation in which the H-1B worker will be employed at the place of employment;
- 8) That notice of the H-1B application will be provided to workers employed in the occupation in which the H-1B will be employed as signified by posting the Labor Condition Application in a conspicuous place in the workplace for at least ten (10) business days and returned to Office of Immigration and International Admissions, noting the dates of posting and whether or not there were any inquiries (the Labor Certification Application along with posting and removal instructions will be sent to the Department by Office of Immigration and International Admissions after the prevailing wage is determined);
- 9) That the reasonable cost of return transportation to the H-1B's home country will be covered by the employer in the event employment is terminated prior to the ending date on the H-1B petition submitted to US Citizenship and Immigration Services. (See dates entered in Part 1, Number 5).

Required Signatures:

Faculty Advisor/Supervisor Signature: _____ Date: _____

Name and Title of Faculty Advisor/Supervisor: _____

Department Chair/Head or Dean Signature: _____ Date: _____

Name and Title of Department Chair/ Head or Dean: _____

Any misrepresentation of facts or employer's failure to comply may result in the following, affecting all of the University of South Alabama, not just the department:

- Assessment of back pay for the foreign national and/or other employees in the occupational classification
- Maximum of \$1000 fine for each violation
- A suspension of University of South Alabama's labor condition applications and a prohibition of filing and approval of labor condition applications or applications for permanent alien employment certification for one year
- A prohibition of the filing of immigrant or nonimmigrant visa petitions with USCIS for at least one year
- Federal criminal penalties for knowing and willful submission of false statements to the Federal Government of \$10,000 and/or imprisonment of up to 5 years

H-1B Packet Appendix B: H-1B Export Control Form

OVERVIEW OF EXPORT CONTROL REQUIREMENT FOR H-1B

In support of your request for H-1B sponsorship, the Office of Immigration and International Admissions is required to certify on the USCIS I-129 petition whether or not a license for export controlled technology or technical data is necessary for the professor/researcher being sponsored. To facilitate this requirement, we ask your assistance in completing the questionnaire below, which will allow the Office of Immigration and International Admissions to begin filing H-1B support. In addition, the Office of Research Compliance and Assurance will review the form and if necessary will confer with the sponsored-individual and appropriate supervisor or administrator to determine whether a license under EAR or ITAR would be required. The license acquisition process would be initiated in parallel to H-1B sponsorship. Any future changes or extensions of the sponsored H-1B worker's employment must also be reviewed for compliance. For more information about Export Control, visit <http://www.southalabama.edu/researchcompliance/index.html>.

SECTION 1: PROSPECTIVE H-1B EMPLOYEE AND DEPARTMENT DETAILS

H-1B Employee's Name: _____
 Employee's Country of Citizenship: _____ Employee's Country of Birth: _____
 PI/Supervisor's Name: _____
 School/Division: _____ Department: _____

SECTION 2: EXPORT CONTROL QUESTIONS

- | | |
|---|--|
| <p>1. Is the nature of the H-1B Employee's work confidential/proprietary (i.e. the results of the work/research projects <i>are not</i> intended for teaching, publication, or to be otherwise shared broadly with the interested public and within the scientific community)?</p> | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| <p>2. In the course of his/her employment, do you anticipate that the H-1B Employee will be provided access to:</p> | |
| <p style="padding-left: 20px;">a. Any USA-owned technical data or technology that is considered proprietary or confidential to University of South Alabama?</p> | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| <p style="padding-left: 20px;">b. Any third party-owned technical data or technology that is considered proprietary or confidential to the third party owner? This includes U.S. government furnished technical data with dissemination controls or other restrictive markings, as well as ITAR-controlled software, and information restricted under an NDA.</p> | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| <p style="padding-left: 20px;">c. Equipment specifically designed or developed for military or space applications? (See U.S. Munitions List under 22 CFR § 121).</p> | <input type="checkbox"/> YES <input type="checkbox"/> NO |

Please sign and submit to the Office of Immigration and International Admissions with the H-1B application packet. While OIIA can begin processing H-1B support with this form, please be aware that OIIA will send this form for a secondary review to Dusty Layton in the Office of Research Compliance and Assurance, CSAB 120 251-460-6625, dlayton@southalabama.edu.

REQUIRED SIGNATURES

We attest that the information being provided at this time is true. If at this time no export license is required and, during the course of his/her employment at USA, there are any changes to the H-1B Scholar's work that would require a license, we will contact the Office of Research Compliance and Assurance and the Office of Immigration and International Admissions.

PI/Supervisor: _____ Date: _____
 Chair/Director or Dean: _____ Date: _____

- A license for Export Control is not required for this scholar.
 A license for Export Control is required for this scholar, and that process has been initiated.

Research Compliance Office: _____ Date: _____

H-1B PACKET APPENDIX C: FILING FEE REQUEST

Instructions for USCIS Fee Payment

Required fees:

\$460.00	Form I-129, H-1B petition
\$500.00	Fraud Prevention and Detection (<i>initial H-1B, H-1B coming from another employer</i>)
\$1,410.00	Form I-907, Premium Processing, if applicable and requested
\$2,000.00	Approximate Attorney Handling Fees

Below are the procedures for requesting USA checks or direct deposit to be issued for fee payment:

- Invoice will be issued from the Office of Immigration and International Admissions
- Direct Deposit processed for vendor Klari B. Tedrow – J00424930 or David Ware – J00408972 (whichever attorney is retained).
- **Do not submit** payment request to Accounts Payable without proper invoice from the Office of Immigration and International Admissions.
- Please ask Accounts Payable to notify our office when a direct deposit has been issued.

H-1B PACKET APPENDIX D: EMPLOYEE'S INFORMATION

PART 1: H-1B APPLICANT DEMOGRAPHIC INFORMATION

NAME AND RESIDENCE INFORMATION:

Full Name (as in passport): _____
Family Name (Surname) Given Name (First) Middle Name (if any)

All other names used : _____
(Include maiden name and names from all previous marriages)

Place of Birth (required): _____ : _____ : _____
City Province/ Territory Country

Citizenship & Residence (required): _____ : _____
Country of Citizenship Country of Permanent Residence

Date of Birth (Month/Day/Year): _____ Gender : Male Female

CONTACT INFORMATION:

Current Address: _____

E-mail address: _____ Phone Number: _____

**UNIVERSITY OF SOUTH ALABAMA POSITION INFORMATION:
 (Please provide contact information for your intended employer at University of South Alabama)**

USA Academic Department: _____ Supervisor's Name: _____

PART 2: FOR APPLICANTS CURRENTLY IN THE UNITED STATES ONLY

Current Immigration Status (i.e. F-1, J-1, H-1B) : _____ Date Current Status Expires (M/D/Y): _____

If you are in H-1B Status with an employer other than USA, are you currently employed?: **YES** or **NO**

Employer's Name and Address: _____

Expected termination date of current H-1B Employment (Month/ Day/ Year): _____

Date of Last Arrival (stamped on I-94 Card, the White Card in Passport) (Month/Day/Year): _____

I-94 # (Eleven Digit Number on the White Card in Passport): _____

Are you currently on F-1 Optional Practical Training (OPT)? **YES** or **NO**

If YES, List dates of OPT (Month/ Day/ Year): _____ **through** _____

Do you have spouse/children who will file for H-4 status with this petition? **YES** or **NO**

PART 3: IMMIGRATION INFORMATION & HISTORY

Passport # : _____ Passport Country: _____

Passport Issue Date (Month/Day/Year): _____ Passport Expiry Date (Month/Day/Year): _____

U.S. Social Security Number (If any): _____

A #/Alien#/USCIS# - if any. (A/Alien/USCIS number is listed on EAD Cards and on any I-140 or I-485 Notices) : _____

At which consulate will you apply for your H-1B Visa stamp, either now or the next time you travel abroad?

City (outside of the U.S.): _____ Country: _____

**SUPPORTING DOCUMENTATION TO BE SUBMITTED TO OFFICE OF IMMIGRATION AND
INTERNATIONAL ADMISSIONS**

- Copy/Scan of Current CV/ Resume
- Copy/Scan of all University-level academic degrees, diplomas, and transcripts/mark sheets.
 - Diplomas and transcripts/mark sheets do not have to be originals
 - Documents not in English must be translated by someone competent to do so
 - Degrees or documents issued by non-U.S. institutions will have to have a foreign credential evaluation (Office of Immigration and International Admissions can recommend an evaluator)
- Copies/Scans of 4 most recent pay stubs/ paycheck notifications if currently employed in the United States
- Copy/Scans of ALL current and previous immigration documents:
 - Passport Identification Pages **
 - Current/ most recent Visa Stamp **
 - I-94 Card (FRONT AND BACK) or printout from <https://i94.cbp.dhs.gov/I94/#/home>**
 - All previous I-20s, DS-2019's, and H-1B/H-4 I-797 Approval Notices, etc. **
 - Employment Authorization Card (e.g. EAD Card for F-1 OPT or J-2 EAD Card) **
- Copy/Scan of I-612 waiver approval, Department of State recommendation for waiver, or completion of 212(e) Two-Year Home Residency Requirement if currently or previously on J Visa **
- H-4 Application: If you have dependent family members who are already in the U.S. in H-4 status or on another visa type, and you would like to change/extend their status as an H-4 dependent, would you like the attorney to process these forms for an additional fee? YES or NO, I will complete
If yes, include the following:
 - Include the above starred (**) items for your family members
 - Check made payable to Klari B. Tedrow/David Ware for the amount invoiced (Office of Immigration and International Admissions will send invoice)