Understanding H-1B & TN Employment Status: The Basics
Office of International Affairs

Dan P. Ashton, Associate Director
Melissa Fox, International Scholar and Employee Adviser
Reshecoa Flanders, Employee Services Assistant
Agenda

- Status Overview
- H-1B Process
- H-1B Forms
- Travel
- Legal Permanent Residence
- Questions and Answers
Overview of H-1B Status:

Definition: H-1B visa classification may be granted to a foreign national who will perform services (work) in a “specialty occupation”.

A specialty occupation requires theoretical and practical application of a body of highly specialized knowledge to fully perform the required duties, and a bachelor’s or higher degree in a specific field as a minimum for entry into the occupation.

H-1B status is for temporary workers.
Overview of H-1B Status

Position may be a permanent one, but the beneficiary must be filling it temporarily (up to 6 years maximum).

Prior time accrued in H-1B status is deducted from the six-year total (unless there has been a minimum of 12 consecutive months spent outside the U.S. between appointments.

Tenure track positions may be filled by H-1B workers.

Application is *employer based*; worker cannot sponsor self.

If anything in an employee’s work status changes, immediately contact OIA.
H-1B vs. TN vs. E-3

H-1B petitions are available to all foreign nationals that qualify.

TN petitions are available to Canadian and Mexican citizens under the NAFTA Trade Agreement.

E-3 petitions are available to Australian citizens; have some specific characteristics; and are very similar to H-1B petitions.
H-1B Process

OIA receives *complete* and *authorized* H-1B request form from Unit, including:

- Electronic Payment information
- Department Code Form (BSD)
- Actual Wage Form
- I-129 Certification Compliance Questionnaire (2 signatures on page 3)
- Authorized signatures (2 per page 4 & 6)

OIA will request additional information from employee through our Personal Information Sheet
**H-1B/E-3/TN Processing Request**

**Status Requested:**
- [ ] H-1B
  - New H-1B: $225, ($325 + $500)
  - Port H-1B/Concurrent: $225, ($325 + $500)
  - Extend/Amend H-1B: $325
- [ ] E-3 (Australian citizens only)
  - Type: [ ] New
    - E-3 at Consulate (no fee to department)
    - E-3 filed with USCIS ($325)
- [ ] TN (Canadian and Mexican citizens only)
  - Type: [ ] New
    - TN Entry at Border (no fee to department)
    - TN filed with USCIS ($325)
  - I request premium processing. (The premium processing fee is an additional $1,225).

**Type of request:**
The employee will come to the University of Chicago from abroad.

**Employment dates:**
- Employment start date: [ ] ASAP OR [ ] Start date: [ ]
- Employment end date: [ ] Max allowed OR [ ] End date: [ ]

**Part One: Information about the Academic/Administrative Unit Making the Request**

Departmental Contact Name: [ ]
Dept. Code: [ ]
Phone: [ ]
Fax: [ ]
Email: [ ]

**Part Two: Information about the Employee**

Name: [ ]
Employee's e-mail address: [ ]

Gender: [ ] Male [ ] Female
Part Three: Information about the Position

Department, division, school or institute:

Degree required for position:

Field of study required for position:

Job title:

*If Postdoctoral Scholar, please attach a job description on the department's letterhead.

Requisition #: __________  Annual salary: __________  Benefits amount: __________

Full-time position: [ ] Yes  [ ] No  If part-time, hours per week: __________

If part-time, rate per hour: __________

Full address where work activity will take place; if any work time is spent at any other location, please list each address with number, street, city, state and zip code, including work location(s) in Chicago:

How many other employees (including student employees) will this individual formally supervise? [ ]

Part Four: ACCES Cost Transfer Information

Name of Account:

Account number:

(including subaccount)

Amounts of: [ ] $25  [ ] $500  [ ] $1,225

Name of authorized signatory:

Part Five: Signatures

Please make sure the request form has two signatures.

Name of signer (Chair, Director, or authorized representative):

Signature ____________________________  Date __________

Name of signer (Dean, VP, or authorized representative):

Signature ____________________________  Date __________
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<td>20105</td>
<td>Office of Medical Center Development (MCD)</td>
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<td>Cancer &amp; Leukemia Group B (CALGB)</td>
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<td>2010570</td>
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<td>20145</td>
<td>Organismal Biology &amp; Anatomy (OBA)</td>
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<td>Molecular Genetics &amp; Cell Biology (MGCB)</td>
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<tr>
<td>20148</td>
<td>Family Medicine (Fmed)</td>
</tr>
<tr>
<td>20150</td>
<td>Orthopedic Surgery (OS)</td>
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H-1B / TN / E-3 Actual Wage Form

Employee's name _______________________________
Department, division, school or institute _______________________________
Job Title _______________________________
Annual salary _______________________________

Please provide the salary range of individuals within your school, research institute, department, or laboratory with the same job title and similar qualifications as the H-1B worker. $ _______________________________ to $ _______________________________.

Please check all of the following factors that were considered when determining the H-1B worker's salary:

- Degree earned
- Area of Specialization
- Previous work experience
- Publications
- Requirements from the funding source (grant, etc.)

If the above does not fully describe the factors used to determine the salary for similarly employed individuals, please use the space on the next page to explain your compensation system.

I hereby certify that the salary shown above reflects the wage level paid to all other individuals with similar experience and qualifications working in this school, research institute, department, or laboratory. If there is more than one wage paid, I am able to explain the reason(s) for the differential in wages.

Name of signer (Chair, Director or authorized representative): _______________________________
Signature _______________________________ Date _______________________________

Name of signer (Dean, VP or authorized representative): _______________________________
Signature _______________________________ Date _______________________________

Please send this form to the Office of International Affairs, 1414 E 59th Street, Room 291. As required by federal regulations, a copy of it will be included in the H-1B Specialty Worker’s "Public Examination" file. For the sake of confidentiality, however, the individual’s name will be deleted from that copy.

1414 E. 59th Street, Chicago, Illinois 60637, Tel. (773) 702-7752, Fax (773) 702-3058
international-affairs@uchicago.edu http://internationalaffairs.uchicago.edu
Addendum

Please use this space to explain your compensation system.
The United States Citizenship and Immigration Service requires that an employer, when filing an H-1B petition, certify (i) it has reviewed the Export Administration Regulations (EAR) administered by the U.S. Department of Commerce and the International Traffic in Arms Regulations (ITAR) administered by the U.S. Department of State, and (ii) it has determined whether or not a license (prior authorization) is required from either of these Government agencies to allow an employee who is a foreign national access to export controlled items or technology (laboratory equipment/research instruments, materials, software or technology/technical data) controlled under the EAR or ITAR. The transfer or release to a foreign national of such items by any means is "deemed" to be an export to the foreign national's country of citizenship or permanent residence, potentially requiring an export license unless a particular authorized license exemption applies.

Please complete the questionnaire below. The questionnaire must be completed or signed by the Principal Investigator or other appropriate University authority with direct oversight of the visa applicant's work. The Department Chair must also sign the completed questionnaire. Please note that unless a pre-authorized exemption applies, an export license may be required before the applicant may start his/her activities.

Questions should be directed to University Research Administration (URA), after a thorough review of the information published on its web site (http://researchadmin.uchicago.edu/policies_compliance/research_compliance/export_controls/trade_sanctions.shtml).

1. Will the visa applicant be working in one of the following areas: biomedical sciences, computer sciences, space or space launch sciences, or any engineering or scientific discipline? Engineering or scientific disciplines may include but are not limited to the following: Chemical, Electrical, Semiconductor, Material Science, Physics, Mechanical, Geophysical, Marine, Astronomy, Nuclear, Artificial Intelligence or Robotics. [Please provide brief explanation of work assignment]
Check one:

☐ No, the assignment will not involve, expose or potentially expose the applicant to any scientific discipline, including but not limited to the ones listed above. Please sign and date this form below and submit it to the Office of International Affairs in conjunction with your H-1B processing request.

☐ Yes, the assignment will involve, expose or potentially expose the beneficiary to a scientific discipline (including but not limited to one or more of those listed above). You are required to check all the boxes for questions 2-5 below and sign and date at the bottom. If you do not have the information necessary to complete this certification, please contact the Director of University Research Administration (773-702-8604), crucshes@uchicago.edu to complete the processing of this certification questionnaire. If, by virtue of the question, you are unable to check one of the following boxes, University Research Administration will work with you to further determine whether the work intended for the visa applicant requires prior export control authorization from a governing U.S. agency or requires a Technology Control Plan to temporarily or permanently restrict access by the beneficiary to any what is not export controlled.

2. ☐ The visa applicant will not be working under a sponsored research agreement (e.g., grant or contract) that restricts or prohibits the participation of foreign persons, i.e., there are no restrictive clauses pertaining to foreign nationals or non-U.S. persons participating in the research.

3. ☐ The visa applicant will not be working under a sponsored research agreement (e.g., grant or contract) that restricts or prohibits the research team's right to publish any of the data or research results, except for the sponsor's right to review and exclude from intended publication proprietary data that, under the terms of the Agreement, is exempt from publication.

4. ☐ In performing the work under the visa, the visa applicant will not be provided access (whether or not actually required for his/her work assignment and whether through hard or soft copy) to:
  - Technical data or information that has been stamped or otherwise designated by the sponsor or collaborating institution as "export controlled";
  - Sponsor or third-party proprietary or confidential information, materials, or software that is the subject of a Non-Disclosure Agreement (NDA) or equivalent confidentiality agreement;
  - Proprietary (to sponsor or a third-party) technology for the development of cryptography, or proprietary source code containing cryptographic functionality; and
  - Information pertaining to the "use" of laboratory equipment (that is not in itself the subject or result of self-invented fundamental research) for purposes of this definition, "use" means that all of the following 6 types of activities occur:
    - Operation, installation, maintenance, repair, overhaul and refurbishing.

5. ☐ In performing the work under the visa, the visa applicant will not be provided access to research equipment, instruments, materials, software, and/or technical data in any form (e.g., blue print, sketches, specifications, documented technology, vendor operational manual/instructions, data results) that is governed under the ITAR.

ITAR covers any item (equipment, instruments, materials, software, and/or technical data as exemplified above) specifically designed, developed or modified for military, defense or space applications and may include such items whether procured from a vendor, or otherwise
CERTIFICATIONS AND APPROVALS

I hereby certify that I am personally knowledgeable with the job duties and other particulars of employment of the visa applicant listed above, and hereby affirm that the contents of the foregoing certification questionnaire are true to the best of my knowledge, information and belief.

I further understand that failure to accurately complete this questionnaire can result in U.S. Government export control violations for which civil and criminal penalties can be assessed against (i) any individual (including a PI) found to have caused or facilitated a violation, and/or (ii) the University of Chicago.

(Principal Investigator/Faculty Sponsor) [Title] [Date]

[Department Chair, or Authorized Department Representative] [Title] [Date]
RECOMMENDATION FOR I-129 CERTIFICATION (check one):
Must be completed by URA if "Yes" is checked in question 1 and any of the boxes for questions 2 through 5
cannot be checked.
If "No" is checked in question 1, or if "Yes" is checked in question 1 and all remaining boxes are checked in
questions 2-5, Check Box 1 will be selected.

In reliance upon the answers provided in the I-129 Compliance Questionnaire above and any additional
conversations that took place with appropriate University faculty and Department personnel, and upon prior
review of the Export Administration Regulations and the International Traffic in Arms Regulations, the
following recommendation is made with respect to the completion of Part 6 of the I-129 that is being
submitted on behalf of _______________________
(Name, Visa Applicant)

☐ Check Box 1  ☐ Check Box 2

(Name, please print)  (Title)

(Signature)  (Date)
APPENDIX I

Under the ITAR, licenses from the Department of State may be required for foreign nationals engaged in activities involving items or technologies identified on the United States Munitions List (USML) that have a defense, military or space application. The following are the categories of items and technologies controlled under ITAR and listed in the USML. For more information about these categories, the USML can be found at http://www.pmddof.state.gov/regulations_laws/itars/official.html:

Category I: Firearms
Category II: Artillery Projectors
Category III: Ammunition
Category IV: Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
Category V: Explosives, Propellants, Incendiary Agents, and Their Constituents
Category VI: Vessels of War and Special Naval Equipment
Category VII: Tanks and Military Vehicles
Category VIII: Aircraft, (Spacecraft) and Associated Equipment
Category IX: Military Training Equipment
Category X: Protective Personnel Equipment
Category XI: Military (and Space) Electronics
Category XII: Fire Control, Range Finder, Optical and Guidance and Control Equipment
Category XIII: Auxiliary Military Equipment
Category XIV: Toxicological Agents and Equipment and Radiological Equipment
Category XV: Spacecraft Systems and Associated Equipment
Category XVI: Nuclear Weapons Design and Test Equipment
Category XVII: Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
Category XVIII: Submersible Vessels, Oceanographic and Associated Equipment
Category XIX: Miscellaneous Articles (specifically designed, developed, configured, adapted or modified for military purposes)
H-1B Process

OIA will conduct Prevailing Wage Determination & inform Unit of issues

- Job Description for postdocs
- Requisition number for all other positions

OIA will send Unit LCA Postings

- LCA = Labor Condition Application

Once postings hung, OIA will submit LCA with Department of Labor

- Notify OIA as soon as postings are hung to avoid delays!
- Postings must be hung for 10 business days
- Original, signed postings must be returned to OIA for Public Access file
- Certification of LCA takes approximately 7 days
**Notice of Filing of Form ETA 9035E, Labor Condition Application for H-1B Nonimmigrant/s**

<table>
<thead>
<tr>
<th>Number of H-1B nonimmigrants sought:</th>
<th>One</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational classification:</td>
<td>Research Professional</td>
</tr>
<tr>
<td>Wages offered:</td>
<td>$39,010 per year</td>
</tr>
<tr>
<td>Location at which the H-1B nonimmigrant will be employed:</td>
<td>900 E. 57th St., Chicago, IL 60637</td>
</tr>
</tbody>
</table>

The Labor Condition Application is available for public inspection at the Office of International Affairs, International House Room 291, 1414 East 59th Street, Chicago, Illinois 60687.

Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

Federal regulations require that the prospective employer of an H-1B worker post this notice for ten business days in at least two conspicuous locations where the H-1B nonimmigrant will be employed. When the postings are taken down, a departmental administrator must fill in the information requested below and send both originals, not copies, to the Office of International Affairs for inclusion in the "Public Examination" folder maintained for this H-1B position, as required by U.S. Department of Labor regulations. The worker’s name must not appear on these sheets.

Dates (month/day/year) of the posting: From __________ to __________

Campus location of the posting: ____________________________

Departmental Administrator:

Signature: ____________________________
Name: ____________________________
Title: ____________________________

Please note: Not posting both notices as instructed above constitutes a violation of U.S. Department of Labor regulations. Not returning both originals of the posting to the Office of International Affairs makes it impossible to maintain the contents of the “Public Examination Folder” which would also constitute a violation. Violations of U.S. Department of Labor regulations can result in sanctions and substantial fines levied against the University.
H-1B Process

OIA will request checks from Office of Financial Services for USCIS processing fees

- Premium processing may be necessary to meet the requested start date or to accommodate necessary international travel. OIA may recommend premium processing in such circumstances
- Except in rare cases, premium processing fees are paid by the Unit ($1,225)
The Process: Step by Step

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<td>$825 $1,225</td>
<td>No</td>
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<tr>
<td></td>
<td>Premium Processing</td>
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<tr>
<td><strong>Concurrent Portable</strong></td>
<td>$825 $1,225</td>
<td>Yes</td>
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<tr>
<td></td>
<td>Premium Processing</td>
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<tr>
<td></td>
<td>Only needed for travel</td>
<td></td>
</tr>
<tr>
<td><strong>Extension Amendment</strong></td>
<td>$325 $1,225</td>
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<tr>
<td></td>
<td>Premium Processing</td>
<td></td>
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<tr>
<td></td>
<td>Only needed for travel</td>
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</table>
Once all required documents have been received at OIA, we will submit the petition to USCIS/immigration

Administrators and Beneficiaries will be able to monitor the progress of their petition at [www.uscis.gov](http://www.uscis.gov)

OIA monitors all pending petitions
THE UNITED STATES OF AMERICA

Department of Homeland Security
U.S. Citizenship and Immigration Services
1-797C, Notice of Action

Receipt Number

Received Date

Notice Date

 Hypothetical

Notice Number

THE UNIVERSITY OF CHICAGO
C/O MARY SCHNITZER LS ADVISER
1841 E 59 ST RN 391 OFFICE OF INTE
CHICAGO IL 60637

Notice Type: Receipt Notice
Amount received: $ 320.00

Receipt Notice: This notice confirms that USCIS received your application or petition ("this case") as shown above. If any of the above information is incorrect, please immediately call 800-375-5283 to let us know. This will help avoid future problems.

Processing Time: Processing times vary by kind of case. You can check our website at www.uscis.gov for our current processing times for this kind of case for which this case is or becomes assigned. On our website’s "case status online" page, you will see similar or may find updates or complete any processing steps on this case. Some of the most of the most information in this notice is pending. However, our websites will show only the status of your case as of this date. This is because we will not update the status of your case when your case is pending because the status of your case may change frequently.

Privacy Act: We use information from this notice to make decisions or take action on your case. We may use information from this notice to make decisions or take action on your case. We may also disclose information from this notice to another government entity if required by law. We may also disclose information from this notice to another government entity if required by law.

If this case is an I-130 Petition - Filing and approval of a Form I-130, Petition for Alien Relative, is only the first step to taking a relative immigrant to the United States. The beneficiary of a petition must wait until a visa number becomes available before he or she can take the next step to apply for an immigrant visa or adjustment of status to lawful permanent residence. To be eligible to receive a visa, the applicant must file a visa petition on Form I-130, Petition for Alien Relative, or Form I-129, Petition for a Non-Immigrant Worker, and the visa petition must be approved before the visa number becomes available. The time it takes for the visa number to become available may be years after the petition was filed. Nevertheless, USCIS will process the case as quickly as possible and inform the petitioner once a visa number becomes available. (If your petition is denied, or if your petition is approved and the visa number is not available, you may be eligible for a new visa number.)

Applying for Removal: In some cases, USCIS may require the petitioner to appear in court. If your case is being handled by the Immigration Court, you may be required to appear in court. If your case is being handled by the Immigration Court, you may be required to appear in court.

If your address changes: If your mailing address changes while your case is pending, call 800-375-5283 or use the "Update Change of Address" function on our website. Otherwise, you might not receive notice of our action on this case.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVC
CALIFORNIA SERVICE CENTER
F. O. BOX 50511
LAGUARDIA WILSON, CA 9069-5111
Customer Service Telephone: (800) 375-5283

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The above petition and change of status have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The person(s) working for the petitioner, has/have been added to the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization comes from the filing of this petition, separate employment authorization documentation is not required. Please contact the INS with any questions about this withhold.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right with him or her. The right side of the form is referred to as the INS or Department of Immigration Record. This should be returned to the INS Inspector when the worker enters the U.S. The left part is for the employer's records. A person granted a change of status who leaves the U.S. must normally obtain a visa in the new classification before returning. The left part of the form is used to apply for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in the new classification as a part of entry or non-flight inspection station.

The petition may also file Form I-485, Application for Action on an Approved Application or Petition, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, admission to the United States, or for an extension, change, or adjustment of status.

This form is not a visa nor may it be used in place of a visa.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVC
CALIFORNIA SERVICE CENTER
P.O. BOX 10111
AZUSA, MICHIGAN, CA 92607-1011
Customer Service Telephones: (800) 375-5283

Form I-797A (Rev. 06/07/93)
OIA handles all follow-up with USCIS, the Unit, and the employee.

In a case of a Request for Evidence (RFE) or Notice of Intent to Deny (NOID), OIA will respond as required. In the case of a denial of a petition, OIA will inform the department, provide a copy of the denial letter, and advise the department regarding options in the case.
H-1B Process

Once the petition has been approved by USCIS/immigration

OIA will send the Employee:
- Original Approval Notice (Form I-797)
- Complete copy of the H-1B petition, including LCA Memo

OIA will send the Unit:
- Copy of the Receipt Notice
- Copy of the Approval Notice

OIA will send Payroll:
- Copy of the Receipt Notice
- Copy of the Approval Notice
All new H-1B employee must sign the LCA receipt notice for our office before beginning employment
  - OIA will contact Employee and provide LCA receipt notice

New employees coming from abroad must complete our electronic check in. Check in requires:
  - H-1B visa sticker
  - Admission stamp
H-1B Process

Notify OIA IMMEDIATELY if:

- Employee leaves their position before the H-1B end date
  - OIA must withdraw the H-1B petition with USCIS and LCA with Department of Labor
  - Some circumstances require the Unit to offer return transportation costs
- Employee will be promoted and his/her job duties or title changes
- Employee changes work location
- Employee adds a new worksite
Travel

Employee cannot travel while new petition (Change of Status) is pending

Employee may travel while extension/portable petition is pending with limitations
  ▪ Complications
  ▪ Must have valid Approval Notice

Travel may require applying for a new visa sticker at the U.S. consulate abroad
  ▪ Administrative Processing/Background Checks

Unit should provide employment confirmation letter
OIA provides very limited advisement regarding LPR (Lawful Permanent Residence)

Current University Policy:
http://hrservices.uchicago.edu/fpg/policies/200/p211.shtml
QUESTIONS???
Upcoming Trainings

• Understanding J-1 Scholar Status: Advanced
  Monday, April 18, 2:30-4pm

• Understanding H-1B Employee Status: Advanced
  Monday, May 9, 2:30-4pm