

Procedures on Processing an H-1b Application at Oklahoma State University

In order to be employed at Oklahoma State University under the H-1b Temporary Worker status the university must petition the Department of Homeland Security (DHS) for the H-1b. The University out sources the H-1b application processing to local immigration law firms. A list of immigration attorneys can be provided or you are welcome to retain an immigration attorney of your choice.

The H-1b applicant is responsible for the following fees:

- Approximately \$1500 for the attorney's fees for regular H-1b processing
- An additional \$1000 for premium processing payable to Department of Homeland Security (DHS), if required
- The Form I-129 filing fee payable to Department of Homeland Security

OSU Department is responsible for the \$500 DHS fraud prevention fee.

Faculty, Lecturer, Research Scholar, Postdoctoral Researcher, and Staff positions

Basic Requirements & General Information

The H-1b Temporary Worker non-immigrant classification may be granted to an international employee that will perform services/work on a temporary basis in specialty occupations, defined as those positions requiring:

- 1) theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor as architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts; and
- 2) A bachelor's or a higher degree in the specific specialty as a minimum for entry into the occupation in the United States.

General Information

- H-1b status may be granted by USCIS in increments of three years or less, depending on the length of employment authorization requested by the department.
- The maximum time permitted in H-1b status is six years, which is reduced by any previous periods of stay in any H or L classification (including H-4 dependent status). Previous periods in H or L status are not counted toward

the six-year maximum if the individual was outside of the U.S. for at least twelve (12) months following the time spent in H or L status.

- An appropriate entry visa is needed when an international, except Canadian citizens, enters or reenters the U.S. (few exceptions – please contact ISS for details). If an H-1b applicant is outside the U.S., he/she will need time to apply for an H-1b visa at a U.S. consulate in order to enter the U.S. Having approval of H-1b status from USCIS does not guarantee issuance of an H-1b visa by a U.S. consulate. The H-1b approval notice (I-797) is not a visa, nor may it be used in place of an H-1b visa to enter/reenter the U.S. H-1b employees are eligible to enter the U.S. 10 days prior to the employment start date.
- In the case of H-1b extensions of the same position, the individual may continue his/her employment up to 240 days if an extension request was submitted to USCIS prior to the end of the previous H-1b period. This 240-day rule only applies to the employee residing in the U.S.
- H-1bs are approved for a specific job at a specific employer at a specific location (city and state). Any changes require prior consultation with ISS and/or attorney and possibly an approval by USCIS.
- Positions used in the H-1b process must be paid and must meet the Department of Labor (DOL) “prevailing” wage regulations as guaranteed by a certified Labor Condition Application (LCA).
- PORTABILITY RULE/TRANSFER H-1B: allows current H-1b status holders to begin new employment upon filing of a new petition at a new place of employment such as OSU. The ISS office must receive an official receipt notice before issuing an OSU Work Permit. Of course, if OSU’s H-1b petition is later denied, the employee must stop working immediately.
- TRAVEL: Please advise the H-1b employee and his/her family members to consult with the ISS office prior to traveling outside the U.S. as immigration regulations change constantly.
- Only spouses and children under 21 may accompany the international employee in the H-4 dependent status. H-4 dependents may not work under any circumstances.
- Effective July 31, 2001, USCIS implemented a Premium Processing Service to allow businesses and organizations the opportunity to obtain faster processing of an H-1b petition to meet their needs for a foreign worker. Specifically, USCIS will provide a 15-calendar day processing time to those who choose to use this service, or USCIS will refund the \$1,000.00 fee otherwise. (Please note the 15 calendar day response time does not

guarantee approval, and you may be asked to submit additional information. This expedited processing fee is in addition to the filing fees, which the employee must pay.)

Departmental/New Employee Procedures:

- 1) Provide the ISS office with a copy of the letter of offer that includes start date, salary, position title, and a brief job description. The letter of offer needs to include the following paragraph:

“This offer is contingent upon your immigration status, and responsibility for meeting immigration requirements of the United States must rest with you. This includes determining what immigration status is appropriate to your particular needs, is consistent with the law, and see that the appropriate steps are taken to secure it. The University will assist you in any way we can in these matters, but you must understand that immigration is a legal relationship directly between an alien and the United States government. We want to be as helpful as possible, but only the U.S. Citizenship and Immigration Service or a United States Consulate is in a position to give you authoritative advice.

Approval of this contract is contingent upon the production of documentation of identification and eligibility for employment as required by the Immigration and Reform and Control Act of 1986.”

- 2) Contact the ISS office to obtain information on the immigration attorneys available in the local area. The ISS can contact the new employee directly or provide the department with the information.
- 3) Provide the ISS office the contact information of the immigration attorney retained.
- 4) Complete the required forms from the immigration attorney pertaining to the OSU position, salary, and title. The new employee will complete the portions of the forms regarding personal data.
- 5) Labor Condition Application (LCA) – posting notices must be posted for 10 working days and returned to ISS office for verification of posting. The posting notices must be posted in the department and Human Resources. Both posting notices are filed in the new employee’s H-1b public file in the ISS office. Posting Notices for the H-1b applicant only provide evidence that the department is paying a foreign national the required prevailing wage. It is not advertising an opening for the position.
- 6) Request the \$500 check for DHS. (See procedures below)
- 7) Letters involved with the application must be signed by the department head or supervisor and prepared on department letterhead. The immigration attorney’s will provide the format of the letter.
- 8) When approved the ISS office will receive the approval notice (I-797). An OSU Work Permit will be issued for payroll purposes.

- 9) The completion of the H-1b process includes a public file notification. The ISS office will send a public file notification to the department and the new employee for signature that needs to be returned to ISS office. The public file notification outlines the responsibilities of the department and the new employee regarding the H-1b status. It is essential for the ISS office to maintain the public file in case of audits from the Department of Labor.

Special Notices:

- An immigration attorney is **required** to be retained for the H-1b processing.
- All Labor Condition Applications (LCA) and Form I-129 immigration forms must be signed by the Provost & Senior Vice President.
- It is suggested to apply well in advance for the H-1b in order to avoid the premium processing fee of \$1,000 that is paid by the new employee.
- The ISS office is the contact for all H-1b questions and obtaining the signatures required on immigration documents and Department of Labor forms.

ISS Procedures:

- Contact new employee, if requested
- Contact the retained attorney to begin the process
- Provide information needed to complete the H-1b application
- Answer immigration questions regarding the procedures and obtaining the signatures needed from the Provost.
- Process all posting notices and public file information
- Assist with the procedures on issuance of the \$500 DHS fee
- Issue OSU Work Permit and provide assistance on tax treaties

Procedures for requesting issuance of the \$500 DHS Fee

The department will complete a requisition with the following coding:

Vendor#: A0001415450
Vendor: Department of Homeland Security
Remit to Address: Room 076 Student Union
Attn: Linda Dunbar
Subcode: 8360
Object Code: 3138

Description: Anti-fraud fee for H-1b application for (Name of Employee)

Attach an internal "green card". This is simply a 3 X 5 green card or green paper attached to the front of the requisition so that the check will not be mailed. It should have the following notation:

NOTICE

Please do not mail this check

Deliver to or call

Linda Dunbar – 744-5459

This check must be attached by ISS office to the H-1b application that is sent to the immigration attorney who then sends it to the DHS. It **MUST NOT** be mailed separately. DHS would never be able to match the check to the H-1b application if sent separately. It is also a DHS requirement that the check be sent with the application.

Documentation to attach: (These will be emailed to the requesting department)

- Copy of the Congressional Act that authorized the fee
- Copy of the letter or an email addressed to Regina Henry, International Students and Scholars, from the immigration attorney requesting the \$500. This letter establishes the relationship between OSU, the individual, and the immigration attorney.

If you have additional questions please contact the ISS office at 076 Student Union, Stillwater, OK 74078, 405-744-5459 or <http://osunet.okstate.edu/iss/default.asp> .