

H-1B OVERVIEW

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MELTZER HELLRUNG
IMMIGRATION SOLUTIONS

H-1B OVERVIEW

The H-1B classification is for individuals sponsored by companies working in occupations that require a bachelor's degree or higher in a specific field(s). The sponsored employee must hold the relevant degree (or its equivalent) that is necessary to work in the sponsored occupation.

THE JOB MUST MEET **ONE** OF THE FOLLOWING CRITERIA TO QUALIFY AS A SPECIALTY OCCUPATION:

- ⇒ Bachelor's or higher degree or its equivalent is normally the minimum entry requirement for the position.
- ⇒ The degree requirement for the job is common to the industry or the job is so complex or unique that it can be performed only by an individual with a degree.
- ⇒ The employer normally requires a degree or its equivalent for the position.
- ⇒ The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

Under the H-1B classification the sponsoring employer is required to pay at least the prevailing wage for the occupation in the geographic area where the employee will work, as certified by the Department of Labor.

Period of Approval: An H-1B approval is valid for up to three years. An employee can be in H-1B status for six years total (these six years may be with multiple employers). To extend a stay beyond six years the employee must be sponsored for a green card.

H-1B Cap: The H-1B visa has an annual cap of 65,000 visas, with an additional 20,000 slots for petitions from beneficiaries holding a U.S. master's degree or higher. H-1B workers employed at higher education institutions, related nonprofits, or government research organizations are exempt from this cap.

In March, USCIS opens online registration for cap-subject companies to enroll individuals in the H-1B lottery. Initial selections are announced by the end of March, and selected companies must submit full H-1B petitions between April 1 and June 30. If there are not enough petitions to meet the visa cap, USCIS may hold additional lotteries. Once approved, work authorization starts on October 1.

Please see our [H-1B Lottery Overview](#) collateral for more information

H-1B Transfer: The H-1B is transferrable among U.S. employers. A new application is needed for each new H-1B employer. The employee can begin working for a new employer once a transfer petition is received by the USCIS; approval is not required first.

H-1B Extension: Employers can sponsor an extension of H-1B status up to six months ahead of the expiration of the current approval. The employee retains work authorization for up to 240 days past the expiration date while an extension is pending.

H-1B Amendment: An H-1B amendment is a request to change major details in an existing H-1B visa petition. The purpose of an amendment is to reflect major changes in employment conditions, such as job title, worksite location, salary, work hours, and job duties. An amendment must be filed before the proposed change takes effect. Minor changes, such as a job title change with no or minimal changes in job duties, do not require an amendment, but must be noted in any future H-1B extensions.

H-1B APPLICATION PROCESS

1 Employer opens a case with Meltzer Hellrung



IN ORDER TO GET STARTED, WE NEED THE FOLLOWING:

- Name of candidate
- Email address
- Job title and job description
- Offered salary
- Address(es) of work location(s), including home office if applicable. If the individual will work at a client site, provide the name of the client.
- Resume

2 Meltzer Hellrung files a Labor Condition Application with the Department of Labor



The Department of Labor takes up to seven calendar days to certify the Labor Condition Application (“LCA”). The employer must also complete a public access file based on the filing of the Labor Condition Application. This public access file includes notifying employees of the filing of the LCA and keeping documentation available regarding how the offered wage was determined. Meltzer Hellrung will provide complete guidance regarding the public access file.

3 Meltzer Hellrung reaches out to the sponsored individual to complete an online questionnaire and provide the required documentation



We will email the candidate with instructions to complete this step.

4 Meltzer Hellrung drafts all necessary forms and letters to file the H-1B petition



We will send these forms to the employer and candidate for review. The employer may choose to share these draft documents with the candidate.

5 When all forms and letters have been finalized and all required documents have been provided, Meltzer Hellrung will ship the completed petition to the USCIS



If the candidate is in the United States we can also submit an H-4 application for all dependents of the candidate. Please note we cannot submit an H-1B cap petition prior to selection in the lottery.

6 USCIS reviews the H-1B petition



Generally, the USCIS takes several months to review H-1B petitions. H-1B petitions are eligible for premium processing service, which requires the USCIS to adjudicate a petition within 15 business days. USCIS may not immediately approve a petition. The USCIS may first issue a Request for Evidence (“RFE”) seeking additional information before issuing a final decision. Should an RFE be issued, the USCIS provides about three months to respond. We will send clients a list of documents needed to respond to an RFE, should one be issued.

7 Decision of H-1B petition



If the petition is approved, USCIS will send the official I-797 approval notice to Meltzer Hellrung’s office. We will forward that approval notice to the employer. If the candidate is already in the United States, that person’s status will typically automatically change to H-1B.

If the petition is denied, we will discuss the options with the employer, including filing an appeal, motion, or refiling the petition. Motions and appeals must be submitted within 33 days of the denial.

8 Acquire visa stamp at local U.S. consulate or embassy



This step is usually only required for first-time applicants not currently residing in the U.S. Please note a consular appointment is not needed if the person is currently in the U.S. and a change of status is approved. The consular appointment will only be needed when the individual leaves the U.S. In order to enter the United States in H-1B status, the candidate must acquire an H-1B visa stamp from the local consulate or embassy.

For more complete info, see our [consular processing collateral](#).

TO DO SO, THE CANDIDATE MUST TAKE THE FOLLOWING STEPS:

- ⇒ File form DS-160 online at ceac.state.gov/genniv
- ⇒ Pay consular fee
- ⇒ Schedule an appointment
- ⇒ Attend the appointment with the following documents
 - I-797 approval notice
 - Copy of H-1B petition sent to the USCIS
 - Passport
 - DS-160 confirmation
 - Two most recent pay stubs or employment verification letter

9 Enter U.S. and get I-94 from Customs and Border Protection



The I-94 is digital and can be found at <https://i94.cbp.dhs.gov/i94/#/home>

DOCUMENT REQUIREMENTS



Please note that we **do not** need originals of any documents for H-1B purposes. All documents should be scanned and uploaded to the candidate's Voyager account.

DOCUMENTS REQUIRED FROM EMPLOYERS:

- Signed forms
- Recent financial documents, such as tax return, audited financial statement, SEC 10-K filing, or profit and loss statement
- Marketing materials describing the company
- Employment contract with candidate (if applicable)
- Statement of work or client contract if candidate will be placed at a client's work site

DOCUMENTS REQUIRED FROM ALL CANDIDATES:

- Diploma(s)
- Transcripts
- Education evaluation by professional evaluator if degree(s) were earned at educational institutions outside the U.S. Meltzer Hellrung LLC can help procure an appropriate evaluation if one is needed
- Translations of diploma(s) and transcripts if they are not in English
- Passport and current and prior visa stamps
- I-20 forms if candidate is/was a student in the United States
- EAD card(s) if candidate was ever issued an EAD
- I-797 approval notice if candidate previously had a visa application adjudicated by the USCIS
- DS-2019 if candidate was ever in J-1 status

DOCUMENTS REQUIRED FROM CANDIDATES CURRENTLY IN THE UNITED STATES:

- I-94 found at <https://i94.cbp.dhs.gov/i94/#/home>
- Last two pay stubs if candidate is currently employed

DOCUMENT REQUIREMENTS (continued)



Please note that we **do not** need originals of any documents for H-1B1 purposes. All documents should be scanned and uploaded to the candidate's Voyager account.

DOCUMENTS REQUIRED FROM CANDIDATES CURRENTLY IN THE UNITED STATES AS A DEPENDENT:

- Spouse's passport
- Spouse's I-94
- Spouse's I-797 approval notice(s)
- Spouse's last two pay stubs
- Marriage certificate

DOCUMENTS REQUIRED FOR H-4 VISAS FOR DEPENDENT SPOUSE AND CHILDREN UNDER 21:

- Passport for each person, including U.S. visa stamps
- I-94 for each person
- I-797 notices, if any
- EAD card, if any
- Marriage certificate for spouse
- Birth certificate for child



MELTZER HELLRUNG

IMMIGRATION SOLUTIONS

Meltzer Hellrung challenges conventions to deliver better outcomes.

Founded with the belief that immigration can be a strategic advantage, we understand the complexities of immigration and respond with innovative solutions to meet business and talent needs. Our unique solution - skilled immigration professionals delivering responsive service to clients through Voyager, our proprietary immigration management platform, delivers the best immigration experience to companies, employees and their families.

