



SOUTHEASTERN LOUISIANA UNIVERSITY
H-1B Guidance for Departments

General Information

The H-1B nonimmigrant category may be used to employ a worker temporarily in the United States if the employee will work in a “Specialty Occupation,” defined as a professional position requiring at least a Bachelor’s degree in a specific “specialty” field, or the equivalent. If the position is one which does not generally require a college degree, then it may not be possible to obtain an H-1B for that occupation. The employee must prove that he or she is qualified for the specialty occupation, and for the specific job offered by the department at Southeastern. They also must be able to show that his or her foreign university degree is equivalent to a US degree, and that the area of academic specialization is relevant to the job to be performed. If the employee does not possess a college degree, but possesses many years of experience in the occupation, then professional experience may substitute for academic training under certain conditions.

H-1B employment may be full-time or part-time, and may be sponsored for periods as short as need be or for as long as three years. Presently workers may obtain H-1B status for an initial period of up to three years, with one extension of status for an additional three year period, for a total of six years. **Extensions beyond the normal six years may be obtained where the alien has filed for permanent residence, before the beginning of the sixth year of H status, and where the application for permanent residence has not been withdrawn, revoked, or denied.**

The H-1B Filing Process

The International Services Office works with a contracted attorney, David Ware and Associates, to process all H-1B applications. All attorney’s fees are paid for by the International Services Office. Other fees, such as filing fees, etc. will be paid for by the hiring department. See Part II below for more information.

PART I – Documents to Submit to the International Services Office (ISO)

1. The Employee will submit to the ISO the **H-1B Employee Questionnaire and Document Checklist** along with the required documents. This form will be sent to the employee once the department contacts the ISO.

PART II – Fees

The Department of Homeland Security imposes significant fees on employers seeking to sponsor H-1B workers. The International Services Office only covers the cost of the attorney’s fees. The hiring department is responsible for the following fees:

I-129 Filing Fee: Form sent to DHS to petition to hire an H-1B worker. Updated filing fees may be found at www.uscis.gov for form I-129. An invoice will be provided to the department upon request of the fees with the most up to date fee amount

Fraud Fee of \$500: Fraud prevention and detection fee paid by all employers when filing an initial H-1B petition

Premium Processing Fee of \$1410: Optional and can be paid either by the department or employee (Will be discussed further under Filing the I-129 Petition below)

IMPORTANT: Hiring departments are responsible for paying the Fraud Fee and Filing Fee. It is suggested that you request the checks from Accounts Payable as soon as you receive approval to hire the foreign national. An invoice will be provided with details on exact amounts and who the payment should be made out to. The Fraud Fee of \$500 and the I-129 Filing Fee must be made out as separate checks. Be sure to note on your Process Form for Payment, etc. that the Accounts Payable Office is to call the International Services Office at 549-2360 as soon as the payments are ready to be picked up. They are NOT to mail the checks to the Department of Homeland Security or to David Ware & Associates until the ISO processes the other documentation to be mailed with them.

PART III – The Labor Condition Application (LCA) and Notice to Workers

Labor Condition Application

The purpose of the LCA is to ensure that the U.S. workers are not negatively impacted by the employment of alien workers. This office, along with the contracted attorneys, will ensure that the necessary regulatory requirements are met so that you are inconvenienced as little as possible and we will prepare and file this application on your behalf. Form ETA-9035 is the Labor Condition Application form. On this form there are several attestations which are required by the Department of Labor. These attestations are as follows: (a) that the nonimmigrant worker will be paid a salary which is at least as high as actual wage and not less than prevailing wage; (b) that the employment of this nonimmigrant will not adversely affect working conditions of U.S. workers; (c) that there is no strike, lockout or work stoppage in progress at the time the LCA is filed; and (d) that notice is being provided to other workers in the occupation, in which the alien worker will be employed (this is accomplished by posting a notice of filing at the worksite and will be discussed further under Notice to Workers). By signing the LCA form, we are attesting to the accuracy of statements listed and our intention to comply with these conditions.

With respect to (a) above, please note that you are required to pay the higher of the “prevailing wage” for the occupation or the “actual wage” you pay to all other individuals with similar experience and qualifications and employed in the same job having the same duties. This “prevailing wage” is an average wage for similar positions in the geographic area of intended employment. The contracted attorney will research and supply prevailing wage information for us, and will advise if the alien’s salary must be increased to meet the Department of Labor’s prevailing wage requirement. “Actual wage” only becomes an issue if the alien whom you are petitioning is paid less than similarly employed workers in your department. If the alien is paid less than a worker in a similar position, you must be able to differentiate between the two rates of pay, by showing that the alien’s duties and/or qualifications (education and/or experience) are not the same, thereby justifying a lower wage for the alien.

Notice to Workers

To provide notice to the workers in your department, as required by the Department of Labor regulations, Southeastern must post a “notice of filing” in at least two different, conspicuous locations at the place of employment for 10 consecutive working days. One notice will be given to Human Resources by the ISO to post and the other to your department.

Appropriate locations for posting notices include, but are not limited to, locations in the immediate proximity of departmental and university notices or near departmental mail boxes. We will provide you with a copy of the notice suitable for public posting. This posting will include the attestations (a) – (d) above and will also include a space for you to enter where the notice was posted, the dates it was posted, and a space for your initials. Once the 10 day notice period is complete, you may return the completed notice to the ISO at SLU 10752.

PART IV – Export Control Attestation

There is a new federal requirement that employers certify that they have reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms (ITAR) and have determined whether a license is required from the U.S. Department of Commerce or the U.S. Department of State to allow an employee access to controlled technology. **This attestation is required for all H-1B petitions.** Information on export controls can be found on the Intellectual Property web page at <http://www.southeastern.edu/admin/osrp/research/toolbox/index.html>

Along with the Application for H-1B Work Visa Sponsorship, your department must also submit to the ISO the **Export Control Attestation** form found at www.selu.edu/international under Forms and Information.

PART V – Filing the I-129 Application, Timeline, and Approval Process

Once the Department of Labor approves and returns the LCA, we will file the I-129 with the Department of Homeland Security along with sending the fees previously mentioned. Form I-129 is a multi-purpose form used to request H-1B classification.

If premium processing was requested by payment of the \$1410 premium processing fee, DHS is required to respond to the petition within 15 days of receipt of the I-129. Note that they are not required to necessarily make a decision by 15 days if they request further documentation from either the school or employee. If no further information is required, a decision is then made in the 15 day period.

If premium processing was not selected, the response time will vary from a few weeks to several months. Once the petition has been approved, our office will receive notification that we will then pass on to you and Human Resources that will then allow the employee to begin work.

Maintenance of H-1B Status

If your department wishes to continue to employ the alien worker beyond the expiration of the H-1B visa, an extension must be filed. Employment authorization of the alien worker automatically terminates upon expiration of the visa petition or upon the commission of any act which violates the visa status of the alien. The employment relationship may be voluntarily terminated by the department, or by the alien, at any time during the period of H-1B validity. The sponsorship of an alien worker does not in any way obligate either the department or the alien to continue the employment relationship for any specific period. Once the employment relationship is terminated, the alien has only 10 days of legal status during which to depart the U.S. or file a petition for a change of status or an H-1B petition for new employment. The employee cannot legally work for any employer except the employer who sponsored the H-1B petition. If the employee's position changes substantially, or if the worksite changes, a new petition to amend the conditions of employment must be filed. An H-1B worker who is changing employers may begin working as soon as the new employer files an H-1B petition on his/her behalf.