

MAPP Section 820: H-1B Temporary Worker – Specialty Occupation

The H-1B classification is an employment-based, nonimmigrant visa status for foreign nationals coming to the United States to temporarily perform services in a specialty occupation. This is an employer-specific and position-specific visa classification carrying “dual intent,” meaning that the foreign national may intend to return to his/her home country or to immigrate to the United States.

821. GENERAL POLICIES

821-1. Government Regulations

Several government regulations define the H-1B visa classification and the hiring of a foreign national for temporary employment. Key points about H-1B requirements include the following:

a. Specialty occupation

A specialty occupation requires the theoretical and practical application of highly specialized knowledge requiring completion of a specific course of higher education. The minimum requirement is a baccalaureate degree, or the equivalent, in a field related to the position.

b. Term of status

Total eligibility for H-1B visa status is six years, regardless of the number of extensions or the number of employers sponsoring the H-1B visa holder. An extension of H-1B status beyond the maximum six years is possible under specific circumstances.

c. Employer specific and position specific

An H-1B beneficiary must only be employed and paid by the employer who sponsored the visa petition on his or her behalf. Further, the beneficiary can only be employed to perform duties described in the H-1B petition filed with the U.S. Citizenship and Immigration Services (USCIS). Any significant changes in position or duties require the filing of an amended H-1B petition.

d. Minimum requirements for position

The minimum requirements to carry out the duties of the position must be specified in the job description, including educational background, work experience, duties of the position, appointment title, salary and terms of benefits.

e. Prevailing wage and labor condition application

Wages offered by the sponsoring employer must meet or exceed the “prevailing wage” as determined by the California Employment Development Department (EDD) and a labor condition application must be filed with the U.S. Department of Labor (DOL) to comply with DOL regulations.

f. Authorization for initial H-1B employment

Upon notification that the USCIS has approved the H-1B petition, the beneficiary is eligible to begin employment on the start date noted in the H-1B Notice of Approval (Form I-797).

g. Portability provision

USCIS regulations allow an individual who currently holds, or previously held, H-1B status with another employer to begin employment with UC Merced as soon as the USCIS Service Center acknowledges receipt of the new H-1B petition filed by the University. A current H-1B holder must continue working with his or her current employer until the University files the new petition to be eligible for this provision.

h. 240-day rule

An H-1B employee’s employment authorization can be extended for 240 days beyond the end date of the current authorized period of H-1B employment if a timely H-1B extension application has been filed with the USCIS. The petition to extend H-1B status must be submitted and received by the USCIS prior to the expiration of the individual’s current H-1B status.

i. H-4 dependents

Spouses and minor children of H-1B beneficiaries may obtain H-4 dependent status. H-4 visa status is completely dependent on the principal H-1B visa holder’s status. Individuals in H-4 status are permitted to enroll at a school, college or university, however, they cannot be employed in the United States

821-2. Sponsorship of UC Merced H-1B Cases

UCLA is presently authorized to sponsor UC Merced’s H-1B visa cases and is noted as the H-1B petitioner on the USCIS application and I-797 Notice of Approval.

821-3. Retention of Outside Attorney

UCLA policy requires that an outside attorney be retained to assist with all of UC Merced's H-1B and H-1B extension cases. UC Merced's International Students and Scholars Office (ISSO) will refer H-1B cases to an immigration attorney's office with a positive record of customer service and a high rate of success. A different, University-approved attorney may be retained as an alternative.

821-4. University Requirements for H-1B Petition

UC Merced schools and units requesting sponsorship of an H-1B visa petition in conjunction with the hiring of a foreign national must fulfill requirements set forth in UC Merced and UCLA policies.

a. Fulltime appointment

An officially approved appointment offer for a fulltime (career or contract) position that is critical to UC Merced's academic or research mission is mandatory.

b. H-1B appointment criteria

The hiring manager, school or unit must have the intent to employ the foreign national and commit to fund the salary for the position for three years, or the period of time that remains of the candidate's eligibility for H-1B status if less than three years.

c. Eligible payroll titles

Payroll titles qualifying for H-1B visa sponsorship include the following:

- 1) Faculty: Professor, Associate Professor, Assistant Professor and Lecturer SOE/PSOE
- 2) Librarian series: Librarian, Associate Librarian and Assistant Librarian
- 3) Professional Research series: Researcher, Associate Researcher and Assistant Researcher
- 4) Project Scientist series: Project Scientist, Associate Project Scientist and Assistant Project Scientist
- 5) Specialist series: Specialist, Associate Specialist and Assistant Specialist
- 6) Postdoctoral Scholar appointments: Minimum annual salary of \$36,360 required as of October 1, 2007
- 7) Instructional appointments: Lecturer
- 8) Other staff titles require approval by Executive Vice Chancellor/Provost or Chancellor as exceptions to policy

d. Confirmed funding for required fees

To proceed with the request for H-1B sponsorship, the hiring manager, school or unit must confirm the availability of allowable funds to pay the University's portion of visa petition-related fees. University and government policies, and the terms of grants and contracts, govern the types of funding sources that can be charged for fees related to the H-1B visa petition.

821-5. H-1B Application Process

Many steps are involved in the H-1B petition process, requiring coordination between the H-1B beneficiary, the hiring school or unit, the ISSO, UCLA's Dashew Center for International Students and Scholars, and the attorney's office retained to assist with the case.

a. Initiation of the H-1B petition request

The hiring manager, school or unit contacts ISSO to initiate the request for H-1B sponsorship after the appointment has been approved by an authorized officer of the University. At this time, ISSO must be supplied with the appointment title, appointment start date, salary, contact information (e-mail address and phone number) for the H-1B beneficiary, and a FedEx account number to be charged for the secure delivery of petition-related documents to UCLA and the attorney's office.

b. Confirmation of funds to pay visa-related fees

ISSO sends hiring manager, school or unit the H-1B Petition: Funding Requirements and Fund Sources form to confirm availability of funds to pay University's portion of visa petition-related fees. The hiring manager, school or unit works with appropriate fund administrators to identify FAU(s) for University (including grant or contract) accounts to be charged and obtain signatures to authorize the expenses. Fees, which are described in detail below, include UCLA Dashew Center's administrative recharge fee and the mandatory USCIS Fraud Prevention and Detection fee. In some cases, University funds may be required or can be used to pay U.S. government filing fees and legal fees charged by outside attorney to prepare and file the H-1B petition.

c. UCLA H-1B startup documents

After the H-1B Petition: Funding Requirements and Fund Sources form is completed, signed and returned, ISSO contacts UCLA's Dashew Center to request an H-1B start package, which generally includes a list of seven items required to initiate UCLA sponsorship of the H-1B petition:

- 1) H-1B Biographical Information Form, signed by the dean, chair, director or head of the University unit
- 2) Letter with request to pay outside attorney (if University funds are to be used), signed by dean, director or head of the University unit
- 3) Copy of current curriculum vitae (CV)
- 4) Copy of degree certificate(s), with English translation if applicable, and title page of dissertation if discipline is not noted on degree certificate
- 5) Copy of documents showing current and previous immigration status: All previously issued I-20 forms, Employment Authorization Documents (EADs), DS-2019 forms, H-1B approval notices, passport biographical pages, visas, and front and back of current I-94 card, if applicable
- 6) A Recharge Order Request form, signed by the dean, director or head of the University unit, for UCLA Dashew's Center administrative fee
- 7) E-mail message about arrangement for payment of attorney fees

ISSO sends the H-1B request documents to the hiring manager, school or unit and the H-1B beneficiary for completion along with additional direction and requests for supplemental information required for the H-1B petition. Upon receipt of the completed documents and required information from the hiring manager, school or unit and the H-1B beneficiary, ISSO reviews and sends the package of completed start documents to UCLA's Dashew Center.

d. Documents for dependents of H-1B beneficiary

If a spouse or minor children of the H-1B beneficiary are to be included on the H-1B petition and intend to obtain H-4 dependent visa status, the following documents must also be provided:

- 1) Evidence of marital or birth relations to the H-1B beneficiary, with English translation if applicable
- 2) Copy of documents showing current and previous immigration status: All previously issued I-20 forms, Employment Authorization Documents (EADs), DS-2019 forms, H-1B approval notices, passport biographical pages, visas, and front and back of current I-94 card, if applicable

e. Arrangements for payment of attorney's fee

ISSO sends e-mail message to UCLA's Dashew Center confirming arrangements for payment of fees charged by attorney to assist with the case, responding to item number 7 on start documents list. Message confirms choice of law office, funding source for legal fees (indicating whether the H-1B beneficiary will pay all fees or providing the FAU if University funds, including grants and contracts, will be charged for any portion of the fees) and a department contact regarding recharge activity.

f. Approval of H-1B sponsorship

UCLA's Dashew Center reviews the H-1B startup documents and sends notice to UC Merced when UCLA sponsorship of the H-1B petition has been approved and the case is forwarded to the attorney's office.

g. Fraud Prevention and Detection Fee

The H-1B petition must include H-1B employer's payment of mandatory Fraud Prevention and Detection fee. Attorney's office retained to assist with the H-1B petition provides an invoice for this fee and the ISSO provides a Departmental Order (D.O.) form to the hiring manager, school or unit, which must obtain the signature of the dean, director or head of the hiring school or unit for approval. The original signed D.O. form and the invoice must be provided to the UC Merced Faculty Service Center for processing, with a copy of the signed form provided to ISSO. The Faculty Service Center submits a check request to UCLA and with the request that the check be sent directly to the office of the attorney filing the H-1B petition.

This fee is not required for H-1B extension petitions.

h. Estimate of legal fees

Prompted by a request from ISSO, the attorney's office provides estimate of legal fees for assisting with preparation and filing of the H-1B petition. This estimate is forwarded to the H-1B beneficiary and, if University funds are to be used, to the hiring manager, school or unit.

i. Prevailing wage request

UCLA's Dashew Center submits Prevailing Wage Request to the California Employment Development Department (EDD), a state agency of the U.S. Department of Labor (DOL).

This step is not required for positions represented by a bargaining unit because the negotiated wage is considered the prevailing wage.

j. U.S. Department of Labor posting and Labor Condition Application

After the EDD determines the salary offered is sufficient to meet or exceed the prevailing wage, the hiring manager, school or unit completes and posts a U.S. DOL Notice of Intent to File a Labor Condition Application (NIFLCA) in two locations at each site where the H-1B beneficiary may work. A copy of the completed forms must be returned to UCLA's Dashew Center, which can then file the Labor Condition Application. The completed forms must be posted at each of the locations for 10 work days (weekends and official holidays are excluded).

k. Letter in support of H-1B petition

UCLA sends template of the H-1B petition cover letter requesting USCIS support for the visa petition. Hiring manager, school or unit completes the letter, and sends to ISSO for review. Final letter is placed on official school or unit letterhead; signed by the dean, director or head of the hiring school or unit; and returned to ISSO for delivery to UCLA.

l. Filing of the H-1B petition

UCLA Dashew Center employment-based staff reviews complete H-1B petition documents and gives permission for the retained attorney's office to file the H-1B application with the USCIS. Attorney's office notifies UC Merced when the application has been submitted.

For current H-1B visa holders, a timely notification of USCIS petition receipt may permit the international scholar to begin work on the scheduled appointment start date. In the case of requests to extend the H-1B status of current UC Merced employees, the individual's employment authorization can be extended for 240 days beyond the end date of the current authorized period of employment if the petition is submitted to the USCIS before the current H-1B status expires.

m. H-1B approval notice

Receipt of the USCIS H-1B approval notice (Form I-797) authorizes employees changing to H-1B status from another nonimmigrant visa status to begin working for UC Merced. For H-1B beneficiaries not presently in the United States, the approval notice is sent abroad to the individual so that he or she can obtain an H-1B visa stamp and enter the United States.

821-6. Visa Processing Times

UC Merced schools or units seeking sponsorship of a new H-1B petition are strongly advised to initiate the request at least six months in advance of the prospective appointment start date. USCIS processing times vary and are subject to change at any time. H-1B extension requests should be made four months before the current H-1B status expires.

a. Processing and filing of H-1B petition

Allow at least 60 days for UC Merced, UCLA and the attorney's office to process the H-1B visa request documents and file the petition with the USCIS.

b. Prevailing Wage Request and Labor Condition Application

Allow approximately four weeks for these procedures, which are incorporated as part of the 60-day total processing time for UC Merced, UCLA and the attorney's office.

c. UCSIS review and approval

Allow 90 to 120 days or longer for evaluation and approval of the H-1B petition after the application has been filed with USCIS. Current USCIS processing times are available on the Internet at <https://egov.uscis.gov/cris/jsps/ptimes.jsp>.

821-7. Premium Processing Option

USCIS offers a Premium Processing Service whereby faster processing of the H-1B petition and certain other employment-based applications may be requested by submitting a completed Form I-907 and a supplemental fee of \$1,000 payable to USCIS. Premium Processing guarantees the USCIS Service Center will issue either an approval notice, request for additional information, notice of investigation for fraud, or notice of intent to deny the H-1B petition within 15 calendar days of receiving the request and fee payment.

821-8. New H-1B Cases

Three types of H-1B cases are considered new cases with regard to procedures and policies for the petition.

a. “Free-floating” H-1B petition

Generally, a free-floating H-1B petition is filed with the USCIS for an individual coming directly to UC Merced from a country outside of the United States.

b. Change of status to H-1B

Change of status (COS) cases are those filed for applicants already in the United States and holding another nonimmigrant visa status, such as F-1 or J-1 visa status.

c. Change of H-1B employer

Change of employer petitions apply for individuals already in the United States and holding H-1B status with another employer in the United States.

821-9. Petition for H-1B Temporary Worker Classification Fees

Following is a list of standard fees inherent to H-1B nonimmigrant, temporary worker petitions sponsored through the University. Please check the [USCIS Web site](#) for updates as U.S. government filing fees are scheduled to change at any time:

a. UCLA Dashew Center recharge fee: \$400

Recharge fee to pay for processing and sponsorship of new H-1B petitions and petitions to extend H-1B status: Must be charged to existing UC Merced account.

b. USCIS Fraud Prevention and Detection fee: \$500

Mandatory USCIS fee payable by employer and required for all H-1B petitions filed after March 8, 2005: University check should be made payable to USCIS and must be enclosed when the H-1B petition is filed. This fee is not required for H-1B extension petitions.

c. USCIS fee to file Form I-129: \$320 as of July 30, 2007

USCIS fee to file application for nonimmigrant, temporary worker status: Undated check should be made payable to USCIS and must be enclosed when the initial H-1B petition or the petition to extend H-1B status is filed. [Form I-129 instructions and application](#) available online.

d. USCIS fee to file Form I-539: \$300 as of July 30, 2007

USCIS fee to file application to extend or change visa status for dependents on the H-1B beneficiary's petition who currently hold approved H-4 visa status or are in the United States and wish to change from another nonimmigrant visa status to H-4 status: Undated check should be made payable to USCIS and must be enclosed with Form I-129 when the initial H-1B petition or the petition to extend H-1B status is filed. [Form I-539 instructions and application](#) available online.

e. Optional USCIS fee to file Form I-907: \$1,000 as of July 1, 2007

USCIS fee to file application requesting Premium Processing and 15-day adjudication of the H-1B petition: Undated check should be made payable to USCIS and must be enclosed when the H-1B petition is filed. [Form I-907 instructions and application](#) available online.

821-10. Fee for Outside Legal Services

The attorney's office retained to assist with the preparing and filing of the H-1B petition provides an estimate of fees upon UCLA approval of sponsorship for the application. Basic legal fees for a basic H-1B petition processed during the 2007-08 year begin at \$2,100 (\$2,000 for H-1B legal fee and \$100 for disbursements). For an H-1B extension application during the 2007-08 year, basic legal fees begin at \$1,600 (\$1,500 for H-1B extension legal fee and \$100 for disbursements). Additional legal fees may be incurred for rush cases, if dependents of the H-1B beneficiary are included in the application, if supplemental services are required, or if the case poses unusual challenges and requires extra resources from the law office.

821-11. Funding Sources for H-1B Visa and Legal Fees

Pursuant to federal government regulations and policies of both UC Merced and UCLA, the responsibility of paying fees related to the visa application process generally is shared between the University and the H-1B beneficiary. When charges to University funds, including grant and contracts funds, are required or permitted, appropriate funding sources are dependent on the category of appointment and should be identified in collaboration with and approved by the appropriate fund administrator.

a. UCLA Dashew Center recharge fee

UCLA policy requires that UC Merced pay this fee from an existing funding source that can be recharged. The FAU for the account to be charged must be noted on the UCLA recharge request form submitted with the H-1B or H-1B extension visa request documents.

- 1) Permanent faculty and PSOE/SOE lecturer appointments: Hiring school or unit must pay and should charge to faculty recruitment funds for new H-1B petition, or allowable school funding source for PSOE/SOE lecturers. Recharge fee can be charged to faculty member's startup account or allowable school funding source for H-1B extension petitions. Faculty recruitment funds cannot be charged for an H-1B extension case.
- 2) Librarians: Hiring unit must charge to allowable fund source.
- 3) Research appointments (including Professional Researchers, Project Scientists, Specialists and Postdoctoral Scholars): Hiring school, unit or faculty member should charge fee to grants or contracts from which the salary of the H-1B beneficiary is being paid, if permitted by terms of grant or contract, or from unrestricted school funds.
- 4) Instructional appointments (Lecturers): Hiring school or unit must charge to allowable fund source.
- 5) Staff appointments: Funding identified and approved on case-by-case basis as an exception to policy only.

b. USCIS Fraud Prevention and Detection fee

The U.S. government mandates that the H-1B employer pay the Fraud Prevention and Detection fee, which is required only for initial H-1B petitions and not for H-1B extension petitions.

- 1) Permanent faculty and PSOE/SOE lecturer appointments: Hiring school or unit must pay and should charge to faculty recruitment funds, or other allowable school funding source for PSOE/SOE lecturer appointments.
- 2) Librarians: Hiring unit must pay from allowable funding source.
- 3) Research appointments: Hiring unit or faculty member should charge to grants or contracts from which the salary of the H-1B beneficiary is being paid, if permitted by terms of the grant or contract, or unrestricted funds.

4) Instructional appointments: Hiring school or unit must pay from allowable fund source.

5) Staff appointments: Funding identified and approved on case-by-case basis as an exception to policy only.

c. USCIS fee to file Form I-129

USCIS fee to file the application for nonimmigrant, temporary worker status must be paid by the H-1B beneficiary per UC Merced policies.

Exception: Any expenses associated with obtaining H-1B status that the beneficiary is asked to pay are deducted by the Department of Labor from his or her annual wage for purposes of determining prevailing wage. If payment of these expenses would bring the H-1B beneficiary's wages down below the prevailing wage, hiring school or unit must pay I-129 filing fee from an allowable fund source.

d. USCIS fee to file Form I-539

USCIS fee to file application to extend or change visa status for dependents on the H-1B beneficiary's petition must be paid by the H-1B beneficiary per UC Merced policies.

e. Optional USCIS fee to file Form I-907: \$1,000 as of July 1, 2007

USCIS fee to request Premium Processing and 15-day adjudication of H-1B petition must be paid by the H-1B beneficiary per UC Merced policy.

Exception: Any expenses associated with obtaining H-1B status that the beneficiary is asked to pay are deducted by the Department of Labor from his or her annual wage for purposes of determining prevailing wage. If payment of these expenses would bring the H-1B beneficiary's wages down below the prevailing wage AND pursuing Premium Processing is in the University's interest, hiring school or unit must pay I-907 filing fee from an allowable fund source.

f. Legal fees

Fees charged by the outside attorney office assisting with H-1B petition will be charged to University funds, the H-1B beneficiary or a combination of the two depending on the category of appointment and campus policies pertaining to the appointment title.

1) Permanent faculty and PSOE/SOE lecturer appointments: Faculty startup funds of the H-1B beneficiary may be charged up to a limit of

\$2,100 for initial H-1B petition of permanent faculty member, or to the recruitment funds of hiring school if faculty member's startup account not yet established. Hiring school or unit may charge legal fees to recruitment funds or other allowable funding source for H-1B beneficiary appointed as PSOE/SOE lecturer. Legal fees above the \$2,100 limit for the initial H-1B petition, including all rush fees and fees for dependents, and all legal fees for H-1B extension cases are the sole responsibility of the H-1B beneficiary.

2) Librarians: Any expenses associated with obtaining H-1B status that the beneficiary is asked to pay are deducted by the Department of Labor from his or her annual wage for purposes of determining prevailing wage. Payment of these expenses would bring the wages of an H-1B beneficiary appointed as a librarian below the prevailing wage. Therefore, the hiring unit must pay legal fees from an allowable fund source, not including legal fees charged for dependents on the H-1B petition.

3) Research appointments: Hiring unit or faculty member can charge up to a limit of \$2,100 in legal fees to grants or contracts from which the salary of the H-1B beneficiary is being paid, if permitted by terms of the grant or contract, or to another allowable fund source. Alternately, the H-1B beneficiary can pay all legal fees. Legal fees above the \$2,100 limit for the initial H-1B petition, including all rush fees and fees for dependents, and all legal fees for H-1B extension cases are the sole responsibility of the H-1B beneficiary.

4) Instructional appointments: Any expenses associated with obtaining H-1B status that the beneficiary is asked to pay are deducted by the Department of Labor from his or her annual wage for purposes of determining prevailing wage. Payment of these expenses would bring the wages of an H-1B beneficiary appointed as a temporary lecturer below the prevailing wage. Therefore, hiring school or unit must pay legal fees from an allowable fund source, not including legal fees charged for dependents on the H-1B petition.

5) Staff appointments: H-1B beneficiary is responsible for payment of all legal fees.

Exception: Any expenses associated with obtaining H-1B status that the beneficiary is asked to pay are deducted by the Department of Labor from his or her annual wage for purposes of determining prevailing wage. If payment of these expenses would bring the H-1B beneficiary's wages down below the prevailing wage, hiring school or unit must pay legal fees from an allowable fund source.

821-12. H-1B Amendment Cases

UC Merced and UCLA must file an amended petition with the USCIS if there will be any significant change to a position held by an H-1B employee.

a. Inform ISSO of anticipated changes

Hiring manager, school or unit must inform ISSO staff member of any anticipated change in an H-1B employee's duties, job title, hours worked per week, work locations or salary funding sources that lead to a different department's management of the employee's payroll matters.

b. Determination of need for H-1B amendment

ISSO staff and UCLA Dashew Center staff review changes to determine whether there is a need to file an amendment to the H-1B petition.

c. Process for H-1B amendment

If UC Merced and UCLA determine that an H-1B must be filed, the hiring school or unit will be instructed on how to begin the process. UCLA's Dashew Center does charge a user fee to process amended petitions.

821-13. Employee Termination

If UC Merced terminates the employment of an H-1B beneficiary before the end of the period of authorization in the H-1B petition, the hiring school, unit or faculty member is liable to identify a funding source to pay the reasonable cost of transportation for the scholar to return to his or her home country. The hiring school, unit or faculty member does not have responsibility to pay the cost of transportation if the individual resigns from the appointment or accepts a new appointment, in which case the new employer would take on this liability.

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