

INTERNATIONAL SCHOLARS

H-1B Instructions & Processing Procedures for Department

H-1B Regulations

Hiring a foreign national to work in your department is a complex process. It requires Ohio State to file a petition with the United States Immigration and Citizenship Services (USCIS) to legally employ the foreign national. The Office of International Affairs (OIA) will provide expertise to departments and prepare the H-1B petition for submission to USCIS. **No outside attorneys are to be used.** However, as you prepare the supporting documentation to hire a foreign national, your department must ensure compliance with the regulations for the non-immigration category 'H-1B Temporary Worker.'

Submission of H-1B Petition Materials to OIA

Navigate to the OSU-Scholar Center in PeopleSoft in order to enter the scholar's basic information and submit an invitation request for the scholar to complete his/her personal information. Once the department and the scholar have entered all the necessary information and uploaded all relevant documents, the record can then be submitted electronically to the Office of International Affairs.

Requested Start Date of H-1B Petition

Due to the complexity and various types of the H-1B petitions (New, Extension, Consular Notification, and Portability) the record should be submitted to OIA **six months in advance of the intended start date of the H-1B petition**, whether or not it is for an extension or new employment. Petitions submitted to OIA with requested start dates less than six months into the future will likely need to be changed and/or may result in the foreign national needing to leave the U.S. and be terminated on their current status end date.

Eligibility Requirements for the H-1B

The H-1B Temporary Worker classification is designated by USCIS for non-U.S. workers in **specialty** occupations, defined as those positions requiring:

1. a 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, health, education, business specialties, accounting, law, theology and the arts; AND
2. a bachelor's or higher degree in a specific specialty as a minimum entry into the occupation in the U.S.

More specifically, the individual must possess a minimum of a bachelor's degree in the required field for the position. ALSO, the position itself must require a bachelor's degree in a specific field(s) of study relevant to the duties to be performed, AND the required degree must be one which is a standard requirement for the position being offered.

If one of the above requirements cannot be met, then the department should not submit the case to OIA and seek advice from OIA about other options.

Additional H-1B Requirements

H-1B petitions are approved for a specific job in a specific location by a specific employer. Thus, if the individual will be employed by an affiliated faculty dental or physician practice association with a Federal Employer ID number different than OSU (31-6025986), then a second, subsequent H-1B petition must be filed.

Note: This packet does not cover all possible aspects surrounding a particular individual's circumstances; more information can be obtained by contacting an Office of International Affairs immigration coordinator.

Required Departmental Training

If you have not filed an H-1B petition before, you must attend an H-1B training session before submitting your petition application to OIA. Contact Ryan Walker at walker.863@osu.edu to register for the H-1B training session.

Materials to be uploaded into the Scholar Center by the Department

- **Approved HRB540 position description** (from PeopleSoft) that fulfills all five of the criteria below and **matches verbatim** what is in the letter of support:
 - **Note:** For assistance accessing the report, please see <https://assist-erp.osu.edu/assistereports84/WebHelp/assistereports.htm>
 - If you are still having difficulty, contact Central Payroll at Ohio State, 614-292-2311
 - **Position Description (HRB540 report) MUST:**
 1. Say **'approved'** (not 'proposed') under 'Position Status'
 2. Match the information on the H-1B Department Form
 3. State the official **position classification** and the **detailed job description**
 4. State the minimum education requirements [**degree level AND major(s)**] for the position
 - **Note:** Please ensure that the employee possesses the appropriate degree level (Bachelors, Masters, PhD) and major(s) as described in the approved position description. An individual's degree and major must be consistent with the stated requirements in a position description!)
 5. State any **experience requirements** for the position
 6. State the number of **non-student supervisees**
 - **Note:** the number should only include people over whom this position will have hiring/firing and performance review authority. All other such duties should be described as 'oversees' or 'direct' and should not be included in the number of supervisees
- **Letter of Support addressed to USCIS**
 - For **faculty** positions, a copy of the original faculty letter of offer is sufficient and preferred. **Note:** Lecturer positions should use the standard support letter.
 - For all **non-faculty** positions, provide a letter of support from the department chair or authorized signer. See **Sample Letter** on page 9 of this packet.

Note: Reference employee's degree, CV, and the position description when drafting so the stated requirements exactly match what was stated in the position description. Also, the stated qualifications of the employee must match their CV and degree.
 - For **extension requests** for continuation in the same position, please include a brief letter stating the following:

"This letter is in support of the petition for extension of H-1B status on behalf of Dr. XXXX. Projects are ongoing and Dr. XXXX's services are still needed. Thank you for your consideration."
- **H-1B Department Agreement**
- **H-1B Actual Wage Worksheet**

Materials to be uploaded into the Scholar Center by the employee

- E-mail employee 'Employee Section' of H-1B Packet
- Ensure that all required documents listed on the Employee Checklist are included with your submission to OIA

eRequest

- All information must be **completed** before submitting the eRequest
- Reference the individual's full name on the eRequest
- Include account number (usually 63606 or 63636 except Medical Center cases)
- **Itemize each H-1B fee** on eRequest using the chart below: I-129 \$325 (all cases), fraud prevention \$500 (if applicable), premium processing \$1,225 (if applicable), and OIA processing fee \$1,000 (all cases).
- eRequest must show departmental system approval
- Upload "APPROVED" eRequest to the Scholar Center

Complete an eRequest for \$1,325, \$1,825, \$2,550, or \$3,050 depending on the circumstances outlined below. You will need to coordinate with your department Fiscal Officer to do this.

Note: OIA will request the necessary checks from Accounts Payable. However, the \$290 fee for Form I-539 for any dependent family members paid by the employee should be included with the documentation provided by the employee. If the department will pay, do not list the \$290 on the eRequest; instead the department should cut a check and submit to the immigration coordinator assigned to the case.

Fee Description	Amount	When to Include
USCIS I-129 Processing Fee	\$325	All cases
OIA Processing Fee*	\$1,000	All cases
Department of Homeland Security Fraud Prevention and Detection Fee	\$500	Any cases where individual 1) does not currently work for Ohio State or 2) works for Ohio State but is not already in H-1B status
USCIS Premium Processing Service Fee**	\$1,225	Optional, for a 15-day expedited response time from USCIS; a response may constitute an approval OR a request for additional information

* The OIA Processing fee is non-refundable once processing in OIA commences. The portion of the eRequest applicable to USCIS processing fees becomes non-refundable once the H-1B petition and fees (checks) are mailed by OIA to USCIS.

** Premium Processing ONLY speeds up processing at the USCIS stage. It does NOT speed up processing in OIA, the Prevailing Wage National Processing Center, or the U.S. Department of Labor. It does not speed up issuance of the H-1B visa stamp by the U.S. Department of State if the individual is waiting abroad for approval of the H-1B petition by USCIS.

Submission

- A PDF of the eRequest and all other documents **must be uploaded to the scholar's record, prior to submission to OIA**

Office of International Affairs: Initial Processing

(Estimate: 2 weeks)

1. OIA will begin processing only upon receipt of all required information and documentation.
2. **Review of Documents:** OIA will review supporting documents for accuracy and acceptability, and will notify the department or employee if additional documentation is needed.
3. **Confirmation:** OIA will send confirmation of receipt of the H-1B petition. This email will provide the name and email address of the Scholar Immigration Coordinator in OIA assigned to the case.

Department of Labor

(Estimate: 2 months)

4. **Actual Wage:** OIA will determine that Department of Labor (DOL) actual wage regulations are met based on information provided on the H-1B Actual Wage Worksheet.
5. **Prevailing Wage:** OIA will request a prevailing wage for the position from the Department of Labor (DOL) National Processing Center in Washington D.C. using the information from the approved position description provided by the department. The current Department of Labor processing estimate is 2 months.

Once the prevailing wage determination is returned, OIA will ensure that DOL prevailing wage regulations are met. If the prevailing wage comes back lower than the actual wage offered to the employee, OIA will email the department the completed LCA.

If the prevailing wage determination comes back higher than the actual wage offered by the department, OIA will discuss options with the department. The case cannot proceed until this issue is resolved.

6. **Labor Condition Application (LCA) Posting:** When OIA sends the completed LCA form via email attachment to the department, it is necessary to print out and post two photocopies of the LCA in the locations previously specified on the H-1B Department Form. IMMEDIATELY notify OIA by email of the starting and ending dates of the posting of the LCA (must be posted for a minimum of 10 whole business days).

United States Citizenship and Immigration Services

(Estimate: 3 weeks for premium processing; 2-4 months for regular processing)

7. **Preparation of I-129:** OIA will complete Form I-129 and send the entire H-1B petition to USCIS. OIA will then send a copy of the petition to the department for its records. It takes several months from the date of filing the petition before OIA receives an approval notice from USCIS. Please note, however, that USCIS processing times can vary drastically from case to case.
8. **Approval:** Once the approval notice arrives, OIA will send a copy to the department and keep the original in its files, which can be borrowed as needed by the employee. If in the U.S., the employee will receive a copy of the petition and the new I-94 portion of the approval during an appointment with the OIA Coordinator handling the case. However, if the employee is abroad at the time of approval, OIA will forward the original approval notice along with a complete copy of the H-1B petition to the employee. The employee must return the original approval notice after his or her arrival in Columbus.



OFFICE OF INTERNATIONAL AFFAIRS

INTERNATIONAL SCHOLARS

Export Control – Office of Research Compliance

USCIS requires all applicants to indicate whether the work being done is regulated by the U.S. Export Controls. Please have the employee’s supervisor or Principal Investigator (PI) answer the following questions:

Employee Name: _____ Date of Birth: _____

- 1. Does the employee have citizenship in Iran, Syria, Sudan, Cuba or North Korea? [] Yes [] No
2. List all funding sources that will be used to pay this employee (sponsored research project # or grant # if money is administered by Office of Sponsored Programs or, if using other type of internal funds, please provide the fund number): _____

- 3. Is there any expectation that the Applicant will work on or have access to any research that does not qualify as Fundamental Research (see definition below)? [] Yes [] No
For more information on what qualifies as Fundamental Research see the Office of Research Compliance’s Export Control website: orc.osu.edu/exportcontrol/

- 4. To the best of your knowledge, will the employee work on or have access to any materials, technologies, or services, listed on the Department of Commerce’s Export Administration (EAR) Commerce Control List or that have potential military applications in addition to normal commercial purposes? bis.doc.gov/licensing/exportingbasics.htm [] Yes [] No

- 5. To the best of your knowledge, will the employee work on or have access to any materials, technologies, or services, listed on the Department of State’s International Traffic in Arms (ITAR) U.S. Munitions List or that are specifically designed, developed, configured, modified or adapted for military or space-based purposes? [] Yes [] No
pmdtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf

I verify that the answers are true and correct to the best of my knowledge and that before making a change to this employee’s job duties, I will re-evaluate whether any of the above restrictions would apply:

Signature of Supervisor or Principal Investigator (PI): _____

Date: (mm/dd/yyyy): ____/____/____

Print Name: _____ Title: _____

For additional information regarding Export Control regulations see the University’s export control website at orc.osu.edu/exportcontrol/.



INTERNATIONAL SCHOLARS

H1-B Department Agreement Form

In order to sponsor an employee for H-1B nonimmigrant worker status, the Ohio State hiring Department agrees to the following guidelines and governmental regulations:

1. The Department will read all materials in this packet and all future documents & correspondence related to this case
2. The Department will post the Labor Condition Application (LCA) for 10 business days in two conspicuous locations at the intended place of employment;
3. The Department agrees to the terms of the labor condition application for the duration of the employee's authorized period of stay for H-1B employment and will pay the H-1B employee the amount listed on the certified Labor Condition Application form, which must be 100% of the prevailing wage for the position or the actual wage, whichever is higher, throughout the authorized period of H-1B employment;
4. For any PART-TIME positions, the Department MUST, if one does not already exist, develop a system to track and keep records of actual hours worked, for each day and each week, regardless of whether the employee is paid a fixed salary or such tracking will not be done for U.S. workers;
5. For any PART-TIME positions, the Department will pay the alien the required hourly wage for each and every hour worked, which may not be less than the number stated on Form I-129 and approved by USCIS;
6. The Department will continue to pay the required wage, per item (3), even during nonproductive time that is due to a decision by the Department (e.g., lack of assigned work, training periods, etc), within the authorized period of H-1B employment;
7. The Department will inform OIA of any elective employee unpaid Leaves of Absence prior to each leave to ensure compliance with immigration regulations;
8. The Department agrees to offer the employee benefits and eligibility for benefits on the same basis as U.S. workers;
9. The Department agrees to provide working conditions for the employee that will not adversely affect the working conditions of workers similarly employed, and which are afforded to similarly employed U.S. workers;
10. The Department will accept liability for the reasonable costs of return transportation of the employee abroad if the employee is dismissed from employment by the department (for any reason) before the end of the period of authorized H-1B stay (this normally constitutes the cost of a plane ticket);
11. The Department will, in conjunction with the employee, complete and sign a Departure Form, which the employee will give to an OIA advisor by appointment;
12. The Department will initiate paperwork for any **EXTENSION** of the H-1B employee's authorized period of employment **SIX MONTHS** before the current authorized period of H-1B employment ends;
13. For tenure-track faculty positions, the Department will contact Ohio State immigration attorney Mark Hedien (hedien.1@osu.edu) within 6 months of the offer letter date; and,
14. The Department will contact OIA to begin a new H-1B for the employee when there is a substantive change in the terms of the person's employment, including but not limited to: change in location of employment; salary reduction; change from full-time to part-time or part-time to full-time status; change in position title or responsibilities.

I agree to sponsor _____ for H-1B nonimmigrant worker status
 (Name of employee)
for the period of time indicated on USCIS Form I-797 Notice of Action (i.e., "H-1B approval notice")
and to honor the statements listed above.

Name of Authorized Department Representative: _____

Signature: _____ Date: _____

Failure to comply with the above statements may result in civil or criminal prosecution, fine or imprisonment, or both.



INTERNATIONAL STUDENTS

U.S. Department of Labor (DOL) Requirements

There are two steps required by the U.S. Department of Labor (DOL) in the H-1B process. The first is the actual wage rate. The wage offered to the H-1B cannot be less than that offered to other employees with the same job/duties and similar experience and qualifications. The second is the prevailing wage. The H-1B cannot be paid less than the prevailing wage determination. The employer must pay the higher of these two.

Actual Wage Rate C.F.R. 665.731(a)(1) {Code of Federal Regulations}

The actual wage is the wage rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question. In determining such wage level, the following factors may be considered: Experience, qualifications, education, job responsibility and function, specialized knowledge, and other legitimate business factors. Where there are other employees with substantially similar experience and qualifications in the specific employment in question—i.e., they have substantially the same duties and responsibilities as the H-1B nonimmigrant—the actual wage shall be the amount paid to these other employees.

Prevailing Wage

The Office of Legal Affairs at The Ohio State University has determined that OSU nonimmigrant employees must have a “safe harbor” wage source for the prevailing wage. In a DOL audit, this guarantees acceptance of the prevailing wage determination as correct, without challenge. A prevailing wage determination by the Department of Labor National Processing Center meets the criteria for safe harbor.

Documentation C.F.R. 655.731(b)(1 and 2)

The department shall develop and maintain documentation sufficient to meet its burden of proving the validity of the wage... The documentation shall be made available to DOL upon request. Documentation shall also be made available for public examination... The employer shall also document that the wage rate paid to the H-1B nonimmigrant is no less than the required wage rate. The documentation shall include information about the employer’s wage rate for all other employees for the specific employment... at the place of employment.

In addition to payroll data required..., the employer shall retain documentation specifying the basis it used to establish the actual wage. The employer shall show how the wage set for the H-1B nonimmigrant relates to the wages paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question...

This means the department must retain and be able to provide written documentation to DOL with a complete explanation of the system used to set the actual for all employees in the specific employment in question.

Part-Time Employment

For all H-1B part-time employees (less than 40 hours per week) submitted to DOL and certified on the LCA, regulations require employers to keep records of “hours worked each day and each week by the employee”. A copy of the system used to keep track of these hours must be submitted to OIA with the petition documents. Hourly employees must be paid at the hourly wage listed on the LCA for all hours worked.

Actual Wage Rate

The U.S. Department of Labor (DOL) requires that wages paid to international workers do not depress or jeopardize the wages of U.S. workers. Therefore, the H-1B employee cannot be the least paid compared to others with similar years of experience and qualifications without a valid explanation. Before completing this form, please read the previous page.

Completing this form:

1. Write your H-1B's name on line 1
2. Look up the HR pay band (hr.osu.edu/comp/), print the page containing the band information and submit with this form. Fill in the HR pay band minimum and maximum in the Range column. [If no pay band ('00') see step 6 for instructions on the Range column]
3. Run a report of all current employees in your department with the H-1B employee's job classification. If there are no other people in the department with the same job classification, broaden the search to the college. If there is no one else at the college level, just use the H-1B's information on this form.
Note: You do not need to submit this to us; it's a tool (see steps 4-5).
4. Cross off your H-1B's name on the report you ran (if H-1B is currently employed in that classification)
5. Identify the lowest and highest salaries on the list. Write the name and related information for the lowest paid employee on line 2 and for the highest paid employee on line 3 of the Actual Wage Form.
6. If there is no pay band ('00'), use the highest and lowest salaries to create the range. Insert into 'Range' column.
7. Ensure that your department has a written compensation system as described at the bottom of this page.
8. For job classifications with pay band '00,' if your employee is being paid less than the least paid employee, attach a memo indicating the Department of Labor-justifiable reason (defined below).

Name (List H-1B first)	Job Classification	Required Degree	HR Pay Range for Job Classification	Hours Per Week	Annual Salary
Sample Sample	Research Assoc. 1-Eng	Master's	\$34,216.00 - \$54,745.60	40	\$43,000
1.					
2.					
3.					

I certify that the salaries listed above reflect the wage range paid to all employees with the same job classification in this department (or college, if applicable). I am able to give reasons* acceptable to DOL for significant differences in the wage rate and can provide documentation to support this.

- *When citing differences, reasons may include (but need elaboration): 1) experience, 2) qualifications, 3) education, 4) job responsibilities/function, 5) specialized knowledge.
- Reasons may not include: 1) funded by a different grant, 2) different area of research, 3) insufficient/uncertain funding, 4) other factors that DOL would not consider reasonable.
- **The department must retain and be able to provide written documentation to DOL with a complete explanation of the system used to set the actual wage rate for all employees in the job classification.**

Departmental Authorized Signature: _____

Print Name: _____ Title: _____ Date: _____



Sample H-1B Letter of Support

For all NON-FACULTY positions, provide a letter of support on departmental letterhead from the department chair or employee's supervisor.

- Ensure that the content of the letter is consistent with the position description as approved by Human Resources.
- Ensure that the employee possesses the appropriate degree level (Bachelors, Masters, PhD) and degree subject area as described in the approved position description.
- An individual's credentials should never be inconsistent with the stated requirements in an approved position description!

Date

U.S. Citizenship and Immigration Services

California Service Center
24000 Avila Rd, 2nd Floor, Room 2312
Laguna Niguel, CA 92677

To Whom It May Concern:

I am writing this letter in support of an H-1B petition being submitted by The Ohio State University for _____ (*name of employee*) to serve as _____ (*position title*) in the Department of _____.

The person who holds this position will be required to _____ (*list duties*).

This position requires a _____ (*Bachelors, Masters, PhD*) in _____ (*field or fields of study listed on position description*). (*Experience in specific techniques, procedures, equipment usage, etc. may also be listed as desired or required based upon the position description.*)

_____ (*name of employee*) holds a _____ (*Bachelors, Masters, PhD*) in _____ (*field/fields of study - must match position description**) from _____ University. He/She has experience in _____ (*indicate relevant prior work experience*).

It is my conviction that our department will greatly benefit by employing _____ (*name of employee*). I request that you grant approval of this H-1B petition so that projects within the department may continue. Thank you for your consideration.

Sincerely,

[*original signature*]

Chair or individual's supervisor

* If it is not immediately apparent how the individual's credentials match the requirements of the position description, more detailed information explaining how the individual meets the requirements will be necessary.

HR Person: _____ Employee: _____

H-1B Departmental Checklist

To be uploaded by the Department:

- PDF of the eRequest
- Department Agreement Form
- Export Control Form
- Actual Wage Worksheet
- Approved HRB540 position description
- For part-time positions, a copy of the time sheet that will be used to track hours
- Letter of Support addressed to USCIS
- I have ensured that the letter of support and the degree the employee holds match the position requirements stated on the approved position description
- If you have communicated with an OIA immigration coordinator regarding this case, please include copies of any relevant e-mails

To be uploaded by the Employee:

- Employee Checklist with supporting documents. Documents will include:
 1. Diploma and Transcripts (most recent)
 2. CV (Updated)
 3. Clear Copy of Passport Pages
 4. If currently in the U.S.: clear copies of both sides of the paper I-94 card OR if the last entry to the U.S. was registered electronically, a copy of the electronic I-94 card (cbp.gov/I94) and a copy of the last entry stamp in the passport
 5. **In addition**, all foreign nationals will need to include additional documents, depending on their status. Please refer to the **Employee Checklist** to see what is required. If you have questions as to what these documents look like, please see our Sample Document Packet on our web site.

To be hand delivered to our office:

- H-4 Dependent documentation (if applicable)
 1. Check for \$290 made out to Department of Homeland Security
 2. Completed Form I- 539 (download from <http://www.uscis.gov> under 'Forms')

