

APPLICATION PACKET FOR H1-B (TEMPORARY WORKER)

Application Process for initial H1B's and extensions of the H1B

The H-1B Temporary Worker visa allows foreign nationals to work in the United States in specialty occupations for a period of up to six years (further *extensions possible if an employment-based permanent petition has been filed by Cornell before Year Five of H1B status ends*). Each application can be made for a period up to three years. The application must be filed by the employer; an individual cannot gain an H-1B on his/her own.

- 1. Department Process:** Hiring Unit assembles materials for H1B application paperwork. When all materials are collected, entire application packet is submitted to the ISSO (***incomplete submissions will not be accepted unless specific arrangements have been negotiated – must be a special circumstance, as determined by ISSO.***)
- 2. ISSO/Department of Labor (DOL) Process:** ISSO determines H1B wage, based on DOL's prevailing wages and Actual Wage Statement submitted by hiring unit. ISSO submits a Labor Condition Application (LCA) to DOL. If LCA approved, H1B petition is submitted to US Immigration and Citizenship Services (USCIS).

These 2 processes will take at least 2 to 7 business weeks.

- 3. USCIS/ISSO process:** Case is reviewed by USCIS. When case is approved by USCIS, ISSO notifies the applicant and department of approval. This part of the process can be expedited with an additional fee. *Without an expedite request (\$1225), this part of the process may take many months (2-6), depending on current USCIS processing times.*

Timing of Application

Please note that **we cannot guarantee that the H1B petition will be approved by any specific date.** We can only provide *estimates* of the timing involved. ISSO recommends that application be made **six (6) months in advance of a proposed H1B start date**, but they can NOT be submitted sooner, as per DOL regulations.

Do not submit an H1B application more than 6 months before the proposed H1B start date!

Important Regulations to be aware of:

H1B regulations prohibit the practice known as "benching." Once the H1B applicant has arrived to begin employment, Cornell may not place that worker in unpaid/nonproductive status. Additionally, Cornell must provide return transportation to the home country for any H-1B worker terminated prematurely.

Expedited Processing Option:

The fee for expedited processing is an additional \$1225 (in addition to the I-129 filing fee), payable to USCIS. There are a few things to be aware of. First, the expedite service ONLY covers the USCIS processing time. It does not provide any mechanism for expediting a Prevailing Wage Request, or the Department of Labor's LCA. An approved LCA is required before submission of the H1B petition can be made to USCIS. Second, if USCIS decides that more information is required of us and sends a "request for evidence" (RFE), the 15-day clock begins again, once USCIS receives the requested additional evidence. Even with these limitations, the expedite service can cut filing times considerably.

Changes of Status:

When the applicant is changing from another visa status (example, J-1 or F-1) to H1B he/she **MAY NOT** begin employment until the H1B approval notice has been received from USCIS. Additionally, the applicant may not travel outside the US until the H1B is approved. In some cases, applicants may wish to pay for expedited processing if immediate travel is necessary.

Extensions of Status:

Applications for H1B extension have the same requirements as for new H1B petitions. With extensions of H1B status, Cornell may be able to employ the individual for 240-days while the extension case is pending with USCIS; please consult with the ISSO. In addition H1B workers may travel if their current H1B approval and visa are valid, while an extension is pending.

Change of H1B Employers ("portability" cases):

An approved H-1B petition is not transferable between employers. If an applicant decides to change employers, he/she must begin the entire process again. However, an applicant who is already in H1B status may begin working at the new employer as soon as the new H1B application is received by USCIS. Final USCIS approval is not required for the employment to begin, but only the issuance of the USCIS receipt notice.

Concurrent H1B employment:

H1B's may also have more than one H1B petition active - in other words, more than one H1B employer. Each employer files their own H1B petition; specific to the job and duties and hours the H1B worker will have at their place of employment. Please let the ISSO know if the H1B will be concurrent to your H1B at Cornell.

(H1B Employee's Name)

H1B Cover Sheet and Checklist: Submit With Application

Department/Hiring Unit: _____

Primary Human Resource Contact Name: Phone: Email:	Alternate Human Resource Contact Name: Phone: Email:
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This petition is for:

- _____ New H1B
- _____ H1B Extension
- _____ H1B Portability (H1B is currently on an H1B with another employer)
- _____ H1B Concurrent Employment (H1B will be part time at Cornell and part time with another H1B employer)

Required USCIS Fees (separate checks required)

_____ \$460 filing fee*, payable to USCIS (**California Service Center, US Citizenship and Immigration Services, 24000 Avila Road, Room 2312, Laguna Niguel, CA 92677**)

_____ \$500 anti-fraud fee, payable to USCIS. This fee is applicable when petitioning for:

- a) **Initial or New H1B status.** This includes cases in which the applicant is changing from another visa category (i.e. F-1 or J-1) to the H1B, or
- b) **Changes of Employer.** Cases in which we are filing an H1B petition for someone who already holds H1B status with another employer.

_____ \$1225 expedited processing fee* (optional), payable to USCIS (address as above)

*May be paid by either the applicant or hiring unit with the following exception: **if applicant is not being paid more than the amount equal to the Prevailing Wage + \$460, the fee must be paid by department/hiring unit. (ISSO will let you know if this is the case, once the H1B wage is determined.**

_____ Letter of Support from Hiring Unit. Maximum H1B request length is three years. Letter should be addressed **to: To Whom It May Concern; California Service Center, US Citizenship and Immigration Services, 24000 Avila Road, Room 2312, Laguna Niguel, CA 92677.** This letter, on department stationery, typically consists of four paragraphs:

a) "I wish to support an H-1B application for Dr. X for the position of... This H1B appointment will begin on (month/day/year)*and end on (month/day/year). The position will carry a salary of \$...per..." (***Note: this refers to the date of the preferred H1B start date, NOT the start date of actual employment. If individual is CURRENTLY on F-1 practical training or J-1 academic training, you may wish to discuss their preference for the H1B start date, as they may wish to utilize the full period of current authorized employment. Others may wish to begin the H1B status prior to the expiration of their current authorization status.**)

b) "The main duties of this position are..." (as detailed as possible)

c) "[Dr. X] possesses the necessary qualifications for the above position. [Dr. X's] qualifications include..."

d) Cornell University is aware employers are required by law to provide return transportation for the H-1B worker if the employment is terminated prematurely.

_____. **H1B Prevailing Wage Data & Actual Wage Statement**

Department Chair should review and sign. **Note: Cornell must pay either the prevailing wage (as determined by the Dept. of Labor) or the "actual wage" (as detailed in the Actual Wage Statement), whichever is HIGHER!** If the prevailing wage is higher than the wage being paid to the applicant, the ISSO will notify you. You will then have the following options:

- Increase the salary offered to the H-1B applicant to meet the DOL standards. (It is understood that budget constraints and equity issues may not make this option feasible.)
- Consider the [J-1 Scholar Visa](#). This will allow J-1 exchange visitors to work in the United States for up to five years. **Possible drawback:** Many J-1 visa holders will be subject to the two-year home country physical residence requirement. This requirement would make it extremely difficult for the visitor to change to H1B status or pursue permanent residence. There also may be restrictions on future J-1 programs under the "2 year repeat participation" bar.
- Gather information to refute the findings of the Department of Labor. This should take the form of a recent salary survey published in an independent authoritative source.

_____. **Copy of H1B Employment Posting.** Three (3) copies of the **H-1B Employment Posting form must be made.** One copy must be posted on the department bulletin board and one copy at the Office of Human Resources, Recruitment and Employment Center, 337 Pine Tree Road (send via Campus Mail). They must be posted for **at least 10 days**. Submit the third copy with the final materials submitted to the ISSO, signed and with first and last dates of the posting filled in. **You do not need to wait for the posting to end before submitting your materials to the ISSO, however the ISSO may not submit the LCA to the Department of Labor until the 10 days have elapsed.**

_____. **Signed Certification Regarding Release of Controlled Technology**

TO BE SUBMITTED BY APPLICANT TO HIRING UNIT/DEPARTMENT

_____. H1B Applicant Data Sheet (attached)

_____. Three (3) copies of Ph.D. diploma or an official student transcript and two copies. (If the diploma is in a language other than English or Latin, it must be translated into English, and the translation must be certified as identical to the original). Applicants may be required by USCIS to provide an original diploma copy, and/or a credential assessment. ISSO will notify the hiring unit and applicant, if this is the case.

_____. Three copies of CV.

_____. Three copies of passport ID (photo) page and biographical information page. Include any page that shows that his or her passport expiration date has been extended as well as the visa stamp for the applicant's current visa status, if the applicant is already in the US.

POSSIBLE ADDITIONAL REQUIREMENTS – If Applicable:

_____. **IF PRESENTLY IN THE UNITED STATES** - Three (3) copies of Form I-94. Can be found at <https://i94.cbp.dhs.gov/i94/request.html>

_____. **IF IN F-1 STUDENT STATUS (OR ON F-1 OPTIONAL PRACTICAL TRAINING)** -Three (3) copies of all I-20's and EAD, if applicable (Employment Authorization Document), and three copies of the 3 most recent pay stubs.

_____. **IF CURRENTLY, OR EVER, IN J-1 STATUS** - Three copies of all DS-2019 forms, and three copies of the 3 most recent pay stubs. Please note: If the visitor is, or has ever been on a J-1 visa and is subject to, but has not complied with, a waiver of the two-year foreign residence requirement, an official waiver (**I-612 Approval on Form I-797**) of the requirement will be needed.

_____. **IF PRESENTLY, OR EVER, IN H-1 STATUS** - Three (3) copies of all former Forms I-797 (H-1B Approval Notices) and three copies of the 3 most recent pay stubs.

_____. **IF THERE ARE DEPENDENT FAMILY MEMBERS WHO ARE IN THE US (and wish to change to, or extend, H4 status)** Form I-539, Application to Change/Extend Status. **The form is completed in by the dependent family member, not by the H1B applicant or Hiring Unit.** We recommend that applicants keep a copy of the dependent materials, as the ISSO does not retain a copy of these materials. If submitting Form I-539 with H1B packet, the following items:

- a. _____ \$370 check for I-539 fee, payable to USCIS
- b. _____ Copy of each I-94 card for family members requests the change of status
- c. _____ Copy of marriage certificate and translation (if spouse is applying)
- d. _____ Copies of Birth certificate(s), for a dependent child below the age of 21

e. ____ Copies of the photo pages and biographical pages of passports, including visa stamps showing their current visa status, for all dependents applying for the change of status

IF THERE ARE DEPENDENT FAMILY MEMBERS WHO ARE NOT IN THE US

The H-1B's family members will need to make an appointment with a US Consulate to apply for H4 visa stamps in their passports. They will not be able to enter the country without this stamp. They should be prepared to pay the application fee, which varies, depending on country of citizenship. They should contact the Consulate directly for fees and complete application instructions. For each individual, they should bring to the Consulate:

- A filled-in Form DS-156 (Non-Immigrant Visa Application).
- A photocopy of the H-1B's approval documents.
- One recent passport-style photograph two inches square, with the entire face visible.
- Copy of marriage certificate and translation (if spouse is applying for H4 visa stamp)
- Passport(s), valid for at least six months beyond the end date of the H-1B's appointment.
- Birth certificate(s), if the applicant is a dependent child below the age of 21

TO BE COMPLETED BY HIRING UNIT
H1B Prevailing Wage Data & Actual Wage Statement

Employers must gain the approval of the Department of Labor before filing an application to the USCIS for an H-1B Temporary Worker. Please notice the four conditions of employment to which the employer must attest before gaining the approval of the Department of Labor.

Four conditions:

1. H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in questions **or** the prevailing wage level for the occupation in the area of employment, **whichever is higher**.
2. The employment of H-1B nonimmigrant will not adversely affect the working conditions of workers similarly employed in the intended area of employment.
3. On the date the application is signed and submitted, there is no strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment
4. That notice of the application has been provided to workers employed in the occupations in which H-1B nonimmigrants will be employed, either to the bargaining representative of workers in the occupations in which H-1B nonimmigrants will be employed; or that a notice of this filing is **posted for 10 days in a conspicuous place** where H-1B nonimmigrants will be employed.

Additional REQUIREMENT: An employer is responsible for return transportation costs for any H-1B temporary worker whose employment is terminated prematurely.

Regulations require that the employer document “a full, clear explanation of the system that the employer used to set the ‘actual wage’ the employer has paid or will pay workers in the occupation for which the H-1B nonimmigrant is sought, including any periodic increases which the system may provide...” {20 CFR Part 655 and 29 CFR Part 507} This information must be retained in the employee’s personnel file and in a public access file.

In order to meet federal regulations, you must provide the following information and confirmation. All questions must be answered. Please attach additional sheets if necessary.

INFORMATION ABOUT THE EMPLOYEE

1. Name of alien employee:
2. Degree(s) which the alien holds:

INFORMATION REQUIRED FOR PREVAILING WAGE DETERMINATION:

1. Title of position offered:
2. Annual salary or hourly rate:
3. Hours worked per week:
3. **Minimum** degree required for the position:
4. Field(s) of Study required or accepted:
5. Years of experience or training **REQUIRED** for position, describe in detail:

6. List all work sites for this position.
 ___ Cornell University Campus, Ithaca, NY
 ___ Other (list) :

7. Job duties for this position (be as detailed as possible, attach a description, if necessary):

8. Job Title of the Supervisor
9. Will the position supervise other employees? If yes, how many?
10. Will travel be a required part of duties? If yes, explain.
11. Are there any other working conditions that affect the rate of pay? If yes, explain.

DETERMINATION OF ACTUAL WAGE FOR THE POSITION

1. What is the pay rate **or** pay range for other workers in the same position in the department who have the same level of education, experience, and skills as the alien employee? *(can not be higher than the salary offered to H-1B applicant):*

2. If there is variation in the salaries of workers in the same job as that of the alien employee, specify and explain the factors that account for this variation (i.e. additional duties such as supervisory duties, differences in the number of publications produced, significant awards held, etc...)

3. Explain the system or factors used to determine the wage offered to the alien employee:

4. Explain the system used to evaluate the alien employee’s performance and to provide for periodic pay increases.

IV. CERTIFICATION

I certify that all information contained in this actual wage statement is true to the best of my knowledge. I can provide additional details pertaining to statements made regarding the actual wage for the occupation discussed if needed. I am aware of the conditions of employment (including provision of return travel) for H-1B temporary workers. I authorize the International Students and Scholars Office to seek approval from the Department of Labor and USCIS for an H-1B temporary visa on behalf of the above named individual.

Signature faculty advisor or supervisor

date

name and title (typed or printed)

signature of department chair

date

name and title (typed or printed)

To be completed by Hiring Unit
**Certification Regarding the Release of Controlled Technology or
Technical Data to Foreign Persons in the US.**

There is a federal requirement that employer's 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 US Department of Commerce or the US Department of State to allow an employee access to controlled technology. This attestation is REQUIRED for all H1B petition and O-1 petitions.

Please take some time to review the information on US export* controls at Cornell University's Office of Research Integrity and Assurance:
<http://www.oria.cornell.edu/export/research/deemed.htm>

The hiring supervisor, Department Chair, or other appropriate University authority responsible for oversight of an employee's work and access to technology, must attest to one of the following two statements in order for the ISSO to process the H1B or O-1 petition.

Please understand that a license may be required. Questions on Export License's and EAR and ITAR requirements should be directed to exportcontrols@cornell.edu, after a thorough review of the information published on their web site.

Attestation (appropriate Cornell authority must check one and sign):

____ I certify that a license **is not required** from either the U.S. Department of Commerce or the U.S. Department of State to release such technology (as described in EAR and ITAR) to the foreign person, or

____ I certify that a license **is required** from either the U.S. Department of Commerce or the U.S. Department of State to release such technology (as described in EAR and ITAR) to the foreign person and I will prevent access to the controlled technology or technical data until the required license or other authorization has been obtained.

(Name, please print)

(Title)

(Signature)

(Date)

* Technology and technical data provided to a foreign national within the US is considered an export.

H-1B Employment Posting (Completed and posted by Hiring Unit)

1. Full Legal Name of Employer: **Cornell University**
2. Federal Employer I.D.#: **150532082**
3. Employer's Telephone No. _____ 4. Employer's FAX No. _____
5. Hiring Unit Address _____
6. Address where documentation is kept:
ISSO B50 Caldwell Hall, Cornell Univ. Ithaca, NY 14850

7. OCCUPATIONAL INFORMATION

- (a) Three-digit Occupational Group Code: **090**
- (b) Job Title (indicate if part time): _____
- (c) Rate of Pay _____
- (d) Period of Employment: from _____ to _____
- (e) Location(s) Where H-1B Nonimmigrant will work

8. EMPLOYER LABOR CONDITION STATEMENTS (Employers are required to develop and maintain documentation supporting labor condition statements 8(a) and 8(d). Check each box to indicate that the employer will comply with each statement.)

- (a) H-1B nonimmigrants will be paid at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.
- (b) The employment of H-1B nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.
- (c) On the date this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which H-1B nonimmigrants will be employed at the place of employment. If such a strike or lockout occurs after this application is submitted, I will notify ETA within 3 days of the occurrence of such a strike or lockout and the application will not be used in support of petition filings with INS for H-1B nonimmigrants to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.
- (d) A copy of this application has been, or will be, provided to each H-1B nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which H-1B nonimmigrants will be employed:
 - (i) Notice of this filing has been provided to bargaining representative of workers in the occupation in which H-1B nonimmigrants will be employed; or
 - (ii) There is no such bargaining representative; therefore, a notice of this filing has been posted and was, or will remain, posted for 10 days in at least two conspicuous locations where H-1B nonimmigrants will be employed.

Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

Posted from _____ to _____

Name (printed): _____ Signature _____

H1B Applicant Data Sheet : **PLEASE TYPE SO IT IS LEGIBLE**

Family Name:

Given Name:

Middle Name:

Provide all other names you have used. Including aliases, maiden name:

Date of Birth (please use mm/dd/yyyy format):

Gender: Male Female

U.S. Social Security (if any):

Alien Registration/A# (you would have one if you had OPT as an F1 student):

Country of Birth:

Province of Birth:

Country of Citizenship or Nationality:

Email Address:

If in the United States:

Date of Last Arrival (mm/dd/yyyy):

I-94 Arrival Record Number (can be found at <https://i94.cbp.dhs.gov/i94/request.html>):

Passport Number:

Date Passport was issued (mm/dd/yyyy):

Date Passport expires (mm/dd/yyyy):

Passport Country of Issuance:

Current Nonimmigrant Status:

Date Status Expires or D/S (mm/dd/yyyy):

SEVIS Number (if any):

EAD Number (if any):

****Continued on next page****

Current Residential U.S. Address:

Street Number and Name:

Apt Number (if any):

City or Town:

State:

Zip Code:

****THE QUESTION BELOW IS MANDATORY, EVEN IF YOU HAVE NO PLANS TO TRAVEL, NOT ANSWERING THIS CAN RESULT IN SLOWER PROCESSING TIME****

City and Country of U.S. Consulate you will apply for a visa in if required:

Foreign Address (**REQUIRED**, even if living in U.S.):

Street Number and Name:

Apt Number (if any):

City or Town:

State:

Province:

Postal Code:

Country:

Will you be submitting form I-539 for extension or change of status for your dependents?

If yes, how many dependents will change or extend status with you?

List all dates of prior H1B stay (within the previous 6 years) for you and for any family members: