



**INFORMATION FOR EMPLOYERS:
FREQUENTLY ASKED QUESTIONS
The H1-B Visa for Professional Employees***

What is an H1-B visa?

The H1-B visa is available to individuals coming to the United States to perform services in a professional or specialty occupation for a particular employer.

Is it difficult to hire a foreign worker?

The H1-B visa process is relatively straightforward if the employer and employee are a good match. Of course, some cases are more complicated than others. With any H1-B case, it is advisable to proceed with legal assistance. With qualified counsel, the amount of work involved on the part of the employer is minimal.

Do I have to prove I tried to recruit an American worker before I hire an H1-B worker?

This is a common misconception about the H1-B program. An employer does not have to prove that the company tried to recruit an American worker first.

What type of job can I fill with an H1-B worker?

Many specialized professions qualify for the H1-B visa. These include computer analysts, architects, executive chefs, economists, financial or marketing analysts, psychotherapists, teachers, accountants, chemists, biologists, social workers, and physical therapists, to name just a few. The job may be in almost any field, but must require a university degree or the equivalent experience.

What qualifications must the employee possess?

The employee must have a university degree in an area related to job you seek to fill, or the equivalent in experience. Generally, the INS requires three years of related full-time work experience for each year of university education required for the job. The employee must also hold all U.S. federal, state and local licenses required for the occupation, although exceptions are made in limited instances for those working under the supervision of a licensed professional.

How much do I have to pay the employee?

You must pay the foreign employee the "prevailing wage" for the profession in your geographic area, or the wage you pay others in similar positions – whichever is higher. Your attorney will determine the prevailing wage either by accessing employment surveys available on-line or by requesting that the Department of Labor in your state indicate the prevailing wage for the job. This process can normally be completed in a matter of hours or days.

* This document is aimed at providing potential employers with some basic information about the immigration process and is not a substitute for the advice of a legal professional. As with all areas of the law, immigration laws are subject to frequent change. The information presented here is based upon the experience of the HIAS legal staff and the most up-to-date published information available from the U.S. Citizenship and Immigration Service and other sources.

Can the employee travel?

The H1-B employee can travel freely for business purposes or for vacation.

Do sales positions qualify?

A frequently asked question is whether sales positions qualify for this type of visa. While a position with sales responsibilities that justifiably requires a specific university degree or the equivalent may qualify, most sales positions do not – even if they require a license. For example, real estate salespersons are generally not eligible for H1-B visas. Moreover, any position that is dependent on commissions, and does not have a guaranteed salary which is equal to the “prevailing wage,” will not qualify.

How much does it cost?

The filing fee for the H1-B application is \$130. The employer is responsible for the payment of this fee. The employer or employee can elect to pay an additional \$1,000 “premium processing fee” to expedite the case. A decision on a premium processing case takes two weeks; the INS currently takes one to six months to process non-expedited cases. These fees do not include any attorney fees that may be incurred.

What documentation will I be required to submit?

Normally, the INS requires the employer to submit only the following basic documents: 1) Job description; 2) Job offer letter to employee (describing job duties and why employee is qualified for the job); 3) Financial statement of company; and 4) Other documentation providing the INS with background information about the company, if available (including brochures and newspaper or magazine articles).

Can the employee’s family come to the United States?

The employee’s spouse and unmarried children under the age of 21 can come to the United States with the employee. The spouse of an H-1B visa holder may not work, unless he or she finds an employer who is willing to petition for him or her separately. The employee’s spouse and children can attend school while in the United States.

For how long is an H1-B valid?

An H-1B is valid initially for three years, with one possible extension of three more years. An employer who is interested in retaining the employee for longer may file for an immigrant visa for the employee, which will allow the employee to remain in the United States on a permanent basis (although the employer is under no obligation to do so).

What if it doesn’t work out?

The employer may dismiss an H1-B employee, but is responsible for paying the “reasonable costs” of his or her transportation home.

What about the “cap”?

As of October 1, 2003, there are only 65,000 H1-B visas available annually (down from 195,000 during the previous year). Therefore, it is possible that unless an employer files for the H1-B visa in the early months of the fiscal year (which begins on October 1), an H1-B visa will not be available for the employee until the following October. However, some H1-B employees are exempt from the cap, including employees of nonprofit agencies, university research institutions, and employees who are already in H1-B status and have changed employers.

How can HIAS help? HIAS can help employers by: providing general information about employment-based immigration options; in some cases, providing free or reduced-cost legal assistance (either in-house or through referrals to private attorneys); identifying qualified candidates; and screening potential employees for eligibility for visas. For more information, please contact: Melanie Nezer, Counsel & Director, HIAS Employment Visa Program, (202) 828-5115 or melanie.nezer@hias.org

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