

# UNDERSTANDING THE H-1B PROCESS

This page is a brief overview of the H-1B process for employers who may want to sponsor a foreign national. This FAQ serves as general information on the process and timelines and is not to be considered official immigration advising. Please note that immigration regulations are subject to change and can vary depending on the particular case or situation. Always consult [CGPS](#) and/or the sponsoring employer for additional guidance and information.

## EMPLOYER PERSPECTIVE

### What is the H-1B visa?

The H-1B is an employer-sponsored nonimmigrant visa that permits temporary employment in “specialty occupations”. While [Optional Practical Training \(OPT\)](#) is an employment benefit of the F-1 student visa which allows students to work for a year or possibly longer, the H-1B is a separate visa designated for employment.

### What is a specialty occupation?

A specialty occupation is an occupation that requires: (a) theoretical and practical application of a body of specialized knowledge, and (b) a bachelor’s or higher degree in a field related to the occupation.

### What is the duration of the H-1B visa?

H-1B status is granted for a maximum of 6 years. The H-1B visa and status can be granted in 3-year increments and can be extended up to a total of 6 years (in certain cases it could be extended beyond that).

### Who pays for filing the H-1B petition and how much will this cost?

Because the employer is responsible for preparing and filing the H-1B petition, and in most cases with the assistance of an immigration attorney, they are also responsible for H-1B petition fees. The total cost for [USCIS filing fees](#) (subject to change) and attorney fees can range greatly depending on the attorney fees accrued.

### What is the H-1B Cap?

At this time, there is a limit (cap) of 65,000 new H-1B visas granted each year, and an additional 20,000 visas for employees with a Master’s or PhD. USCIS uses a lottery system to select approved applications until the H-1B cap is met.

### Are any employers exempt from the H-1B Cap?


Some employers are exempt from the H-1B cap depending on certain qualifications. These include U.S. institutions of higher education, non-profit, and government organizations.

Furthermore, employers who are exempt from the cap have the ability to file H-1Bs throughout the year.

### When does the cap H-1B filing process begin?

Early registration begins in March and is always subject to change. You can follow the dates and any updates [here](#). Employers can submit applications up to six months prior to the following fiscal year, which starts on October 1st. This means that the applications can be submitted on April 1st at the earliest. It is recommended that you begin working with an attorney before an application is filed on April 1st as the visa cap may be reached within days.





# Innovators don't fit into molds— they break them.

## When does the USCIS fiscal year start and what is its significance in the H-1B context for Cap employers?

The USCIS fiscal year starts on October 1st and ends on Sep 30th of the following year. When a cap employer needs to sponsor an employee for H-1B and this employee is not currently holding H-1B status, the H-1B petition start date will need to fall on or after October 1st. This means that the employee, if they are not holding an alternate status that would allow for them to join your company prior to October 1st, will only be able to start working for you on or after October 1st. However, international students who are participating in the OPT program will likely be able to join your company before then. (See below).

## What is the Cap-Gap extension policy for students whose OPT authorization will expire before their H-1B status begins on or after October 1?

A student's duration of status and work authorization are extended for students who are participating in OPT and their employer has filed a timely petition that will begin on October 1st. This extension will be terminated if the petition is rejected or denied.

## How long does the process take?

After the H-1B petition has been received by USCIS, the total processing time can take several months with regular processing. Premium processing can reduce the time to about 15 calendar days. However, due to the late winter registration requirement, it is recommended you reach out to counsel as soon as possible. These times are subject to change. Please also note that depending on the case, additional steps and processing times with the US Department of Labor may be necessary. These steps may increase the total processing time by a few weeks to several months. Please speak with your retained counsel for the most updated information.

## Can students apply for the H-1B themselves?

No, the prospective employer is responsible for initiating the petition process on behalf of the employee.

## Can you recommend an immigration attorney that can assist in the H-1B filing?

Locating a good immigration attorney is important because of the complexities and frequent changes in immigration law. The American Immigration Lawyers Association (AILA) has a database of immigration attorneys that can be searched by type of immigration case, language, and location. You can access the AILA database at [www.aila.org](http://www.aila.org).