

UNDERSTANDING THE H-1B PROCESS

This page is a brief overview of the H-1B process for students who may seek H-1B sponsorship through their employers. 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.

STUDENTS PURSUING INDUSTRY JOBS

What is the H-1B visa?

The H-1B is an employer-sponsored nonimmigrant visa that permits temporary employment in “specialty occupations”. While 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 H-1B Cap?

The cap (limit) refers to the number of new H-1B “slots” available during the annual fiscal year. A fiscal year begins on October 1 and ends September 30 of the following year. Currently, regulations set the cap at 65,000 H-1B visas.

What is the H-1B Cap Registration?

Employers seeking to file cap-subject H-1B petitions will be required by USCIS to electronically register each candidate for selection in the fiscal year when employment will commence. For more information please visit the [USCIS H-1B electronic registration process website](#).

What are the steps to acquire H-1B status?

Processes vary per higher education institution, a diagram of the UD H-1B process with a timeline can be found [here](#).

Who pays for filing the H-1B petition?

Most H-1B fees must be paid by the employer. Foreign nationals are only responsible for the [premium processing fee](#) if premium processing is requested by the foreign national for their own personal reasons, and not for a business necessity.

Who is responsible for filing my H-1B petition at my corporate job?

Most employers will hire outside immigration counsel to handle your case, while some may have in-house immigration counsel or staff who could assist.

How long does it take for an H-1B petition to be processed by USCIS?

The processing time for an H-1B petition can vary depending on the circumstances at your employer, the Department of Labor, and USCIS

Can I be employed by multiple employers while on H-1B status?

It is possible to have more than one concurrent H-1B position. However, both positions must be authorized by an approved H-1B petition. For example, if you are working for Employer A and you want to accept a second job with

Employer B while still working for Employer A, then Employer B must file a new H-1B petition for concurrent employment.

Can I travel while my change of status to H-1B is pending?

A foreign national who is not currently in H-1B visa status should not leave the U.S. once the H-1B petition is filed with USCIS. If the foreign national leaves while the initial H-1B is being processed, they will have to apply for an H-1B visa at a U.S. Consulate abroad rather than having their status changed in the U.S. Visa processing times vary by consulate and can be as short as a few days, during non-COVID times. However, in some cases, this extra step can delay the start of employment by several weeks. Guidance regarding traveling and obtaining an H-1B visa should be discussed with the employer and their immigration counsel as it is typically not recommended during the COVID pandemic.

What is dual intent and does it apply to H-1B holders?

A dual intent visa/status enables foreign nationals to be temporarily present in the United States while also having the intention of possibly immigrating to the U.S. on a permanent visa. The H-1B status/visa is dual intent.

Can UD CGPS advise me on how to obtain my H-1B?

UD CGPS is always happy to help answer any general questions you may have regarding this process.

You should, however, ensure that you seek specific guidance from the immigration counsel that your prospective employer has retained.

What are some ways I can increase my chances of receiving an H-1B?

- i. Obtaining a Master's degree or PhD provides you with an advantage in the H-1B lottery system as an additional 20,000 H-1B visas are allocated to those with these aforementioned degrees.
- ii. Researching a prospective employer yields many benefits when pursuing employment, and increasing your chances of receiving an H-1B is one of them. It can be difficult to learn which employers may be willing to sponsor you for an H-1B, so it is helpful to research the sponsorship history of a company. By using the "H-1B Visa" database on GoInGlobal, you have access to the public records of all those employers who have sponsored H-1B visas in the past. This may help determine which companies that you target in your job search.
- iii. Another possible way to increase your chances of receiving an H-1B is to land a position with a cap-exempt employer.

Is the H-1B my only option to work in the U.S. after graduation?

No. As an international student, you may be eligible for other work opportunities based on your visa category.

- Students on an F-1 visa can take advantage of the Optional Practical Training (OPT) option to work as soon as they have a job offer and work authorization from USCIS. Please refer to the [OPT webpage here](#) for more information on how to apply for OPT.
- Students on a J-1 student visa can take advantage of Academic Training (AT) to work as soon as they have a job offer and receive authorization from CGPS. Please refer to the [AT webpage here](#) for more information on how to apply for AT.
 - Please note that if you have a J1 visa and are subject to the 212(e) two-year home-country residency requirement, you are not eligible for H-1B status until the requirement has been fulfilled or waived. Please contact CGPS before beginning the waiver process, as it could impact your eligibility for J status extensions.