

# ImmiCore Law

A Professional Law Corporation

**H-1B Information Guide**  
**Workers in Specialty Occupations**  
**INA §101(a)(15)(H)(i)(b); 214(i)(3)**  
**8 CFR §214.2(h)(1)(B)**

## Definitions:

**Petitioner:** U.S. Employer  
**Beneficiary:** Foreign Employee

**Specialty Occupation:** An occupation that requires (a) theoretical and practical application of a body of highly specialized knowledge, and (b) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the U.S.

## Overview:

Maximum of 65,000 H-1B visas per year, with 6,800 reserved for Chile and Singapore under free trade agreements. This leaves only 58,200 new H-1B visas per year.

## Procedure in General

- Labor Condition Application (LCA).** Petitioner must file a prerequisite application with the U.S. Dept. of Labor (DOL). For H-1Bs this is the Labor Condition Application (LCA) (Form ETA 9035; electronic filing on Form ETA 9035E). In order to file such form a prevailing wage determination must be made first.
- H-1B Petition filed with USCIS.** Form I-129 along with supporting documents must be filed by U.S. Employer at the USCIS Service Center with jurisdiction over employment.
- Receipt Notice.** USCIS issues a Form I-797 Notice of Action approving the H-1B petition.
  - If the Beneficiary is in the U.S. and a change or extension of status is granted, USCIS will issue Form I-1797A with a tear-off I-94 card designating the new status.
  - If the Beneficiary is outside the U.S., USCIS will issue Form I-797B with a tear-off consular notification card.
- 15 Day Premium Processing** - may be available to expedite USCIS's handling of I-129 Petition. An additional fee of \$1,440 is paid to USCIS and the request is made using Form I-907. USCIS will then issue an approval notice, notice of intent to deny, request for evidence, or notice of an investigation for fraud or misrepresentation within 15 calendar days, or automatically refund the fees if none of these actions are taken within the required timeframe.
  - Requests for premium processing may be filed concurrently with the initial H-1B petition, or
  - Later while the H-1B petition is pending.
- Visa Stamping** for a Beneficiary who is outside the U.S. and does not have an H-1B visa.

- a. Beneficiary outside the U.S., s/he must use the H approval notice (Form i-797B) to apply for the corresponding H visa at the U.S. consulate.
  - b. Beneficiary will be required to submit a Form DS-160, Nonimmigrant Visa Application, to obtain the visa from a U.S. consulate abroad.
6. **H-4 Dependent.** Dependent Beneficiary (H-4) will need to apply for the H-4 visa stamp with the Form DS-160 and the principal beneficiary's original Form I-797, or the principal's Form I-94 showing lawful admission to the U.S. in H status.
7. **I-94 Upon Admission**
- a. Beneficiary will be issued a Form I-94 Arrival/Departure Record in H status by an inspector from the CBP. The CBP inspector will note the period of admission on the Form I-94. This information can be electronically retrieved as I-94s are no longer paper stamped into the passport.
8. **I-94 Already in the U.S.** If Beneficiary already in U.S. when H petition is filed.
- a. The Form I-94 may be issued as part of the Form I-797A approval notice.
  - b. If Beneficiary leaves the U.S., s/he will need to submit the original Form I-797 and apply for an H visa stamp at the U.S. consulate abroad in order to return to the U.S. following a trip abroad.
9. **Extension of status.**  
Employer files a Form I-129 and an H Supplement, accompanied by the petitioner's statement showing that the basis for the classification continues to exist.

**Forms:**

- Form I-129, Petition for Non-Immigrant Worker
- Form I-129 H Classification Supplement
- Form I-129 Data Collection and Filing Fee Exemption Supplement
- Certified Labor Condition Application (LCA)

**Filing Fees**

Form	Company of 25 or less employees	Company with 26 or more employees
Form I-129, Petition for Non-Immigrant Worker	\$ 460	\$ 460
American Competitiveness and Workforce Improvement Act of 1998 (ACWIA Fee)	\$ 750	\$1,500
Fraud Prevention and Detection Fee	\$ 500	\$ 500
Premium processing (optional)	\$2,500	\$2,500