

H-1B Program Frequently Asked Questions

What is an H-1B?

The H-1B program applies to employers seeking to hire nonimmigrant aliens as workers in specialty occupations or as fashion models of distinguished merit and ability. A specialty occupation is one that requires the application of a body of highly specialized knowledge and the attainment of at least a bachelor's degree or its equivalent. The intent of the H-1B provisions is to help employers who cannot otherwise obtain needed business skills and abilities from the U.S. workforce by authorizing the temporary employment of qualified individuals who are not otherwise authorized to work in the United States.

The law establishes certain standards in order to protect similarly employed U.S. workers from being adversely affected by the employment of the nonimmigrant workers, as well as to protect the H-1B nonimmigrant workers. Employers must attest to the Department of Labor that they will pay wages to the H-1B nonimmigrant workers that are at least equal to the actual wage paid by the employer to other workers with similar experience and qualifications for the job in question, or the prevailing wage for the occupation in the area of intended employment – whichever is greater.

ELIGIBILITY REQUIREMENTS:

Are there any more H-1B's left this year?

There are a limited number of H-1B visas available each year in the "business industry", however universities are not subject to this limitation, also referred to as the H-1B "Cap".

Am I eligible for H-1B Status?

At the University of Texas at Dallas, the H-1B immigration category is used most commonly for tenure-track faculty positions, but can also be used to employ international faculty and staff in permanent or temporary teaching and/or research positions, coaching positions and some permanent classified or exempt positions (depending upon the position). Some of the more common categories are: Professor, Associate Professor, Assistant Professor, Instructor/Lecturer, Assistant Research Professor, Post Doctoral Research Associate, and Research Scientist.

Note: *Persons who hold, or have held, J-1 or J-2 status and are subject to the two-year home country residency requirement are not eligible for H-1B status until the two-year requirement is either fulfilled or waived.*

APPLYING FOR H-1B STATUS:

How do I apply for H-1B status at the UTD?

It is the responsibility of UTD to complete all required paperwork and file the petition. As the employee, you do not actually complete or sign any immigration forms yourself.

Please have your department start this process by completing the H1B Request and Foreign National Information form which is accessed at: <https://hr.utdallas.edu/employees/immigration/h-1b/>

How much does an H-1B petition cost?

The USCIS filing fee is \$460.00 plus a \$500.00 anti-fraud fee for all initial and transferring H-1B cases. There is an additional \$2,500.00 premium processing fee for expedited petitions. UTD departments are required to pay the filing fee, the fraud fee and, depending on circumstances, the expedited processing fee. The USCIS filing fee for change/extension of status for dependents is \$370.00 regardless of the number of dependents. This dependent fee is paid by the employee.

How long does it take to get H-1B status?

The estimated processing times at the U.S. Citizenship and Immigration Services (USCIS) are 3-6 months for a standard petition. The estimated processing time at USCIS for a "premium processing" request is 15 business days. However, before filing the petition, UTD must gather the documentation from the department and employee to prepare the petition, which takes about 60-days.

Can I ask for my H-1B to be processed faster?

Preparing the petition takes 60-days. However, once the petition is ready, USCIS offers an expedited service for certain employment-based petitions including the H-1B called premium processing. Once premium processing is requested and has been received by the service center, the USCIS guarantees a response within 15 calendar days. The USCIS fee for premium processing is \$2,500.00.

What about my dependents?

If you have been granted H-1B status, your spouse and children (under 21) will normally be eligible for H-4 status. If you and your dependents are in the U.S. in legal status and UTD is requesting that your status be changed to H-1B, your dependents may apply for a change to H-4 status. Your spouse and child should complete and sign Form I-539 (For one dependent) and I-539A (subsequent dependents) and submit it with the UTD petition. The I-539 should be signed by your primary dependent and not by you, unless the oldest dependent is a minor child. If your dependents are outside the U.S., UTD does not need to include any information about them in the petition. After the petition has been approved, they may apply for H-4 visas at a U.S. Consulate. Spouses should expect to present a marriage certificate and birth certificate, and children will be expected to present a birth certificate. *Note: a person with H-4 status may not be employed in the U.S. but is eligible to attend school full-time.*

Will UTD file for H-4 dependents of H-1B employees?

H-4 dependents are not UTD's responsibility and although we can add the documentation to the H-1B petition we do not keep copies of this filing and will not receive any documentation for this petition. All receipt notices and approval notices will be sent directly to H-4 dependent at the address on the I-539.

When may I begin working?

In order to be employed in H-1B status, you must have both an approved petition for UTD and be in valid H-1B status. You may not begin working until then, unless you have another status that permits employment. For this reason, F-1 students often choose to apply for practical training authorization (OPT) and use this as a bridge to H-1B employment at UTD. You do not need a job offer in order to apply for OPT. If UTD files an H-1B petition, it must be filed **and APPROVED** prior to the expiration of your OPT work authorization.

Note: *It may be possible for you to begin work immediately after UTD files a new H-1B petition if you are currently in legal H-1B standing but employed by another institution. For questions regarding transferring your approved H-1B status from another employer to the UTD, please contact UTD Immigration Specialist.*

RULES ASSOCIATED WITH MAINTAINING YOUR H-1B STATUS

After I get H-1B status, may I accept any job?

No! The work permission in H-1B status is granted for a specific job with a specific employer. You must consult with UTD Immigration Specialist **before** starting a new position at UTD or anywhere else. You must consult with the UTD Immigration Specialist if there is a significant change in your current position, such as a change in salary, hours worked, job responsibilities, etc. It may be necessary to file an amended H-1B petition.

If I get H-1B status, how long may I remain in the U.S.?

When filing an H-1B petition UTD requests that USCIS grant employment authorization for typically no less than 3 years. USCIS will normally grant H-1B status for the requested period of time, but no longer than 3 years at a time. The normal maximum stay in H-1B status is 6 years.

What documentation should an H1B employee keep up with while in the US?

- While in the US, make sure that your passport remains valid at least six months into the future at all times.
- Check your I-94 admissions record ([print your I-94](#)) or I-797 approval notice to make sure that your H-1B status expiration date is always into the future
 - You should check your I-94 record each time after returning to the US from an overseas trip, as your H-1B expiration date may change depending on how your arrival in the US was processed

Travel using your H-1B visa and I-797 Approval Notice

- While working at UTD as an H-1B employee, travel only using your H-1B visa and I-797 approval notice from UTD
- Check your I-94 admissions record ([print your I-94](#)) every time you return to make sure your arrival was processed correctly and your "admit until" date is in the future and if it is not contact the immigration specialist for advice on the discrepancy
- Contact the Immigration Specialist if you are planning to travel while UTD is processing an H-1B extension for you, and/or if you are planning on traveling and have concerns

Notify UTD's Immigration Specialist in the event you no longer intend or need to maintain H-1B status with UTD

If you terminate / resign from your H-1B position, or if your immigration status changes (e.g., from H-1B to US permanent resident), please notify the Immigration Specialist as soon as possible once your plans are

confirmed, so that we can update and complete your H-1B and/or I-9 records.

Depart the US by the expiration of your H-1B status, or seek a timely extension of your H-1B status before your current H-1B authorization expires

- Always keep a copy of your I-797 Approval Notice and I-94 departure record so that you know when your H-1B status expires
- Plan to leave by the expiration of your H-1B status, or ask your department to submit an [H-1B Worker Request Form](#), to the HR's Immigration Specialist at least six months before your H-1B expires
- If you have any questions about when your H-1B status expires, contact the Immigration Specialist for UTD

If an H-1B employee seems to have reached the six-year maximum limit, is there any way to extend their lawful status in the U.S. any longer?

H-1B extensions beyond six years may be possible in limited situations. Alternatively, an H-1B worker who has spent a significant amount of time abroad during the H-1B approval period may be eligible to "recapture" that time abroad by providing proof of physical presence outside the U.S. An H-1B extension request (including proof of presence) should be sent to the Immigration Specialist to submit to USCIS. USCIS will not necessarily issue approval for the entire period being requested. If the person has no other options for remaining in the U.S., such as changing to a different immigration status, they should depart the U.S. or risk accruing unlawful presence.

If my job ends earlier than expected, may I still remain in the U.S.?

If your job ends before the end of your H-1B petition approval, UTD must report employment end to USCIS. There is a 60-day maximum grace period for an H-1B worker once the employment ends. Therefore, if your job ends Friday, you will have a maximum of 60 days to arrange for another employer to submit an H-1B petition for you, change to another status, or depart the United States.

What if my employer wants to give me a promotion?

If there are any substantial changes in your job such as a new job title, changes in required qualifications, significant change in job duties, new location, etc, then UTD must file an H-1B amended petition.

If I wish to change jobs at UTD, what must I do?

If you wish to change jobs at UTD, a new H-1B petition must be filed if there are any substantial changes in your job.

Note: According to immigration law which went into effect October 17, 2000, you may begin working as soon as your new employer files the H-1B petition with the USCIS. You do not need to wait for the petition to be approved. This rule applies to scholars who are transferring to UTD in H-1B status and to those who are changing jobs at UTD. When changing STATUS to H-1B though, you must wait for the Approval Notice.

May I still enroll in school after I change to H-1B status?

Yes. If you have H-1B status, the employment should be your primary purpose for being in the U.S. However, you may still register and/or complete a degree while you have H-1B status.

Note: You may not accept an assistantship or other student job while you have H-1B status.

Can an H-1B employee do volunteer work?

Volunteering is allowed as long as the position was advertised as a volunteer position, there will be no compensation and/or benefits (including non-monetary compensation) in exchange for services rendered, and the H-1B employee will not be taking the place of someone who would otherwise be paid.

A prospective employee may not “volunteer” with UTD on a trial basis. Likewise, a foreign national who has been offered a UTD position but is not yet eligible to start H-1B employment may not “volunteer” at UTD in any capacity.

If any of the above requirements are not met, the individual’s activities at UTD will be considered unauthorized employment, which can result in penalties being imposed on both UTD and the foreign national.

Is there any other kind of immigration status that I can use instead of H-1B?

H-1B is a status normally required for a non-immigrant to accept permanent or temporary at the UTD. It may be the only one available to you after your F-1 student optional practical training expires.

Additional statuses commonly used to employ scholars at UTD include.

- **F-1 students** are usually eligible for 12 months of optional practical training after (and sometimes before) graduation.
- **J-1 Scholars and Students:** J-1 students are sometimes eligible for 18 months of academic training or 36 months in a post-doctoral research position with permission from the sponsor. A J-1 scholar may be employed as a non-tenure track teacher or researcher position at UTD.
- **TN: (NAFTA Treaty):** This status can be used by professional employees from Canada and Mexico and is similar to H-1B. However, there is no requirement for the employer to pay or to document the prevailing wage, and the application procedure is much faster than an H-1B. The occupations covered are restricted to those allowed under NAFTA. Note: Mexican nationals need to apply for the H-1B visa stamp in the passport while Canadian citizens are exempt from the visa requirement.

How should I apply for TN status, if I am a Canadian?

You can gain TN status by presenting yourself to the Trade NAFTA Officer at a United States Port of Entry or US consulate with the appropriate UTD letter for the process. If in the US by applying for a change of status to TN in the US, if you currently reside in the US and are maintaining another non-immigrant status, please contact the UTD immigration specialist for help in obtaining this status.

TRAVEL AND LEAVE WITHOUT PAY:

What documents do I need to travel abroad while in H-1B status?

- A valid H1B Visa Stamp, valid passport, H-1B Approval Notice, Letter from your employer confirming your employment from the [work number](#), last 3 receipt pay stubs, employers contact information and a letter from your employer confirming that you are on an approved vacation or leave.
- If you will be applying for an H-1B Visa Stamp, you need a Passport, an H-1B Approval notice, and H- 1B application documents (obtainable by e-mail from the HR Immigration Specialist which include your employment letter, support letter and petition)

Can an H-1B employee go on leave without pay (LWOP)?

Possibly, but it depends on the circumstances.

Even if an H-1B worker is not performing duties, regulations may require that the full wages still be paid during that nonproductive period. (20 CFR 655.731(c)(7)). UTD must continue paying full wages if the H-1B worker is not carrying out their duties due to:

- A decision by the employer (e.g. because of lack of assigned work);
- Lack of a permit or license; or
- Any other reason except as specified below.

An H-1B worker can go on LWOP if:

- During the LWOP period, payment of wages is not required under UTD's benefit plan or any statutes (such as the Family and Medical Leave Act or the Americans with Disabilities Act);
- Conditions unrelated to employment are what take the H-1B worker away from their duties; and
- The LWOP period is at the worker's voluntary request and convenience (e.g. touring the U.S., caring for ill relative) or due to circumstances which render the worker unable to work (e.g. maternity leave, car accident which temporarily incapacitates him/her).
- **Taking leave may impact your immigration status, pay, and benefits. Before an employee takes leave, they must contact the Office of Human Resources:**
 - **Immigration Specialist:** visashrs@utdallas.edu
 - Notify immigration specialist prior to taking leave to ensure there is no adverse impact to employee's immigration status.
 - **Leave Administrator:** LOA@utdallas.edu
 - Contact leave administrator to discuss leave processes and options.