



Unlocking a World of H-1B Opportunities, Together!

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Unlocking a World of H-1B Opportunities, Together!

Congratulations on considering sponsorship for foreign workers

Understanding the H-1B visa and its potential can unlock a world of opportunities for your organization, bridging borders and fostering growth.

In this document, I will focus primarily on answering the top questions that I receive from employers relating to H-1B visa sponsorship.



Disclaimer: This material is not intended to substitute as legal advice.

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1. What is the H-1B visa, and why is it important for employers?

The H-1B visa classification is the most sought-after work visa for professionals. It is an employer-sponsored visa designed for foreign workers who will be employed in a professional occupation in the U.S. that requires at least a bachelor's degree or higher.

The H-1B program allows employers to gain access to a diverse pool of highly skilled professionals from around the globe, bringing fresh perspectives, unique experiences, high engagement, commitment and innovative ideas to the table.

This infusion of international talent fosters creativity and collaboration, igniting breakthroughs and propelling your business forward in today's globalized economy.

The H-1B visa is most used by U.S. employers to address specific skill shortages in specialized fields, ensuring that critical positions are filled with the best-suited candidates.

2. Are there any limitations on the number of H-1B visas available each year?

The H-1B visas are in high demand, are capped and issued by a lottery (yes, you read that correctly!)... meaning there are limitations on the number of H-1B visas available each year, and this is where the term "caps" and the H-1B lottery come into play. There are two main caps or limits on H-1B visas:

- **Regular Cap:** This is set at 65,000 visas annually. These visas are open to professionals with a bachelor's degree or higher who are seeking employment in specialty occupations.
- **Master's Cap:** Additionally, there's an extra allocation of 20,000 visas for individuals with a U.S. master's degree or higher. These are often counted in addition to the regular cap, making a total of 85,000 visas available.

Because the demand for H-1B visas typically exceeds the available slots of 85,000 per year, a lottery system is used to select those who are awarded the opportunity to file to obtain an H-1B visa. In the first quarter of each year, when the H-1B registration window opens, all the submitted registrations are entered into a random lottery drawing. This drawing determines which registrations will be given an opportunity to file to obtain an H-1B visa.

Navigating the caps and lottery requires strategic timing and meticulous registration preparation, ensuring your candidates have the best shot at securing one of these sought-after visas. We start working with our clients on H-1B cap filings in January and guide them seamlessly throughout this process.

Click [here](#) to see our flowchart and get a sense of the whole process.

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3. What is the validity period of an H-1B visa?

H-1Bs are generally granted in increments of up to three years, provided that the cumulative stay in the U.S. doesn't exceed six years. But wait, there's more! In certain situations, extensions beyond the six-year limit are possible, allowing employers to retain their valuable foreign talent beyond the initial period.

Here are some common extensions:

- **One-Year Extensions:** If the H-1B holder is in the process of applying for an employment-based permanent residency (a green card), and certain milestones in the green card process have been reached, they can get one-year extensions.
- **AC21 Extensions:** If the green card process has been ongoing for a specific duration and certain requirements are met, H-1B holders can get extensions beyond the six-year limit. This provision, known as AC21, offers a bridge between the end of the H-1B period and the potential employment-based green card approval.
- **Recapturing Time Abroad:** If the H-1B holder spent time outside the U.S. during their H-1B period, that time does not count towards the six-year limit. This can extend their eligibility to stay in the U.S. on H-1B status.

These extensions are gems in the H-1B visa game, giving both employers and foreign professionals the flexibility to work together for an extended period. It's akin to a career marathon where the finish line isn't rigidly fixed, but instead adapts to the evolving needs and opportunities on the horizon.

It is also worth noting that once an H-1B professional has been issued an H-1B cap, they do not need to enter the lottery again to file for extensions.

4. What positions typically qualify for H-1B visas?

The H-1B visa was designed for specialized professional positions that require at a minimum a bachelor's degree or higher and the employer and the industry normally require a degree for the position. Occupations that qualify for the H-1B visa are typically in fields such as technology, finance, engineering, architecture, or more.

Here are some examples of roles that generally qualify for H-1B visa: software engineers, data scientists/analysts, software developers/engineers, engineers (mechanical, civil, industrial and others), project managers, medical researchers, architects, physicians, and many others.

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5. Does the employer have an obligation to sponsor a foreign worker for a work visa?

Employers are not generally required to sponsor foreign workers for work visas. The decision to sponsor a foreign worker for a work visa is typically at the discretion of the employer, and it often depends on factors such as business needs, the skills and qualifications of the foreign worker, the availability of local candidates, and the overall labor market conditions.

6. What legal obligations does an employer have when sponsoring an H-1B worker?

In general, the employer is required to provide the same working conditions, benefits and opportunities as they would a U.S. worker.

The main unique obligation is that the employer must attest via a Labor Condition Application (LCA) that they will pay wages to the H-1B worker 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.

We prepare and file the LCA in collaboration with the employer. The LCA and prevailing wage requirements are designed to prevent exploitation and to maintain fairness in the job market.

7. Who pays for the fees associated with an H-1B sponsorship?

The general rule is that the law provides that an employer *may not* pass onto the H-1B worker the costs associated with the H-1B process. These are considered an employer's business expense including attorney fees and other costs connected to the preparation and filing of the H-1B petition.

The employee can pay for the attorney fees and other costs associated with filing an application for an H-4 dependent (spouse and children), which may be a spouse or child.

The premium processing fee, if desired, can be paid by either the employer or the employee, depending on the circumstances. For example, if premium processing is driven by an employer's need to start the worker's employment faster, the employer must pay this expense. If the employee is requesting the premium for his or her own benefit, then the employee may pay for premium processing.

Filing fees vary depending on various factors, such as the size of the petitioning organization and the number of employees in H-1B status.

Typical fees include:

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- H-1B Registration: to be determined for 2024 (estimated to be around \$250)
- Base filing fee: \$460
- Anti-fraud fee: \$500
- Education and training fee: \$750 (twenty-five or fewer employees) or \$1,500 (twenty-six or more employees)
- Premium processing (optional and strategically used): \$2,500
- *Paid Consultations and Research and Investigation (R&I)*: We begin our cases with a paid consultation or R&I fee depending on the case to help us determine the facts of the immigration matter, the timelines and best help all involved. After this step, we determine the applicable attorneys fees for the matter.

Our fees are set at a mid-range level, reflecting the specialized and customized work required for every successful case. We take pride in delivering high-quality results, and our fees are designed to reflect the value we bring to our clients while also giving you peace of mind and saving you time.

8. If my H-1B worker quits, can I require them to pay back the H-1B Fees?

Unfortunately, if an employee is awarded an H-1B Visa but the employment relationship doesn't work out, the employer cannot recoup most of the cost associated with the H-1B process.

The U.S. Department of Labor (USDOL) considers payment of the legal or government fees associated with the H-1B process by the sponsored H-1B worker as an illegal assumption of costs, and the responsibility of the employer under labor regulations.

U.S. Citizenship and Immigration Services (USCIS) also considers any payments by the H-1B worker for the H-1B petition fees and costs as an indicator of fraud, i.e., as an improper inducement for the employer to provide visa sponsorship.

However, employers can require the payback of certain fees and costs for expenses incurred principally for the benefit of the employee such as premium processing and certain costs. We recommend case-by-case attorney guidance on this issue.

9. What happens if I need to terminate my H-1B visa worker?

If an H-1B visa holder loses their job, they generally have a grace period of 60 days from the date of termination to find new employment or make other arrangements like return home, go back to school, or change to another visa category. The person can stay in the U.S. legally during those 60 days but cannot work. If they can't find an alternative way to remain in the U.S. legally during the grace period, the ex-employer is required to offer to pay the cost of the flight back to the person to their home country.

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You can find out more about the 60-day grace period [here](#) on our blog.

10. How can I navigate the H-1B visa process smoothly?

I have a few suggestions for you:

- Partnering with an experienced immigration attorney to help you streamline the process, ensure compliance with regulations, minimize delays, and maximize your chances of securing the right talent for your organization.
- Start early and apply early. Do not wait until your candidate is close to being out of employment authorization status.
- Read my book: [Beyond the H-1B](#) for additional information

BONUS QUESTION

11. What pre-employment questions are permissible to ask applicants to help me determine whether a prospective candidate requires immigration sponsorship?

Employers cannot legally deny protected individuals employment because of their real or perceived immigration or citizenship status. Yet, they may want to ask immigration-related questions for practical purposes.

Employers are allowed and encouraged to ask this two immigration-related questions for pre-hire screening:

1. Are you authorized to work in the U.S.?
2. Will you now or in the future require sponsorship for employment visa status (e.g., H-1B visa status)?

You can find out more about permissible pre-employment inquiries [here](#) on our blog;

To your success!

We hope that this information has provided valuable general insights into the H-1B visa process.

Should you have any further questions or require personalized assistance, please don't hesitate to reach out to our dedicated [immigration team](#).

Your success and the success of your organization are important to us.

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About the Author



My journey began in Cuba, where I was born. At 15, I left with my parents, seeking a better future. During a layover in Montreal, we stepped off the plane to claim asylum in Canada, where I eventually became a citizen.

At 21, my husband and I relocated to Florida and started a new journey. We worked our way from a work visa to a green card to achieving our dream of becoming naturalized American citizens and for me also becoming an attorney.

Inspired by the legal professionals who had supported my immigration journeys, I established and developed a corporate immigration practice at Marks Gray, a distinguished law firm in Jacksonville.

My practice is focused on corporate immigration and compliance. Our work includes partnering with employers to bring ease to the immigration process and to obtain work visas, permanent residence (“green card”) and naturalization for their talented foreign workers. I also guide organizations on immigration compliance including Form I-9 and government audits.

I am most proud of partnering with hundreds of HR, Legal and Managers to provide efficiency, empathy and clarity in corporate immigration and compliance.

In business and in life, I have crossed many finishing lines and I look forward to helping you cross your finish line.

To your success,

A handwritten signature in black ink that reads "Giselle Carson". The signature is written in a cursive, flowing style.

Giselle Carson, Esq.



Thank you!

