

FAQ: H-1B Overview

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***This material is not intended to substitute as legal advice.**
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1. What is the H-1B visa?

The H-1B visa classification is 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 its equivalent and specialized knowledge.

2. How many H-1B visas are available?

There is an annual limit of 85,000 cap-subject H-1B visas available, which includes 65,000 visas for foreign nationals holding a bachelor's degree or its equivalent (minus 6,800 carved out for Chile and Singapore H-1Bs) and 20,000 for those holding U.S. advanced degrees, such as a master's. This is what is known as the H-1B visa cap, which is congressionally mandated. However, not all H-1B visas are subject to this annual cap.

3. Who is not subject to this cap?

Certain petitions are exempt from this annual cap, including petitions filed by institutions of higher education, related or affiliated non-profit entities, non-profit research organizations, and governmental research organizations. USCIS published new rules which broaden these cap-exempt organizations.

Additionally, current H-1B holders who are filing for an extension, are filing for a change of employer, or are filing amendments to the terms of employment (such as part-time to full-time or other material job changes) are not subject to the cap.

Past H-1B holders who were already counted against the cap but did not use the full six-year stay are also exempt, and can apply to use the remainder of H-1B time.

4. When can I file for cap-subject H-1B visas?

USCIS' fiscal year (FY) runs from October 1st to September 30th. H-1B petitions can only be filed within six months of the employment start date. Thus, the filing period begins the first Monday in April. Prior to this, in March, there is a registration period and lottery.

5. Will there be a lottery for H-1B visas?

For the past several years, demand has far exceeded the H-1B cap. Thus, USCIS conducts a lottery.

6. How does the lottery work?

USCIS conducts an electronic random selection (lottery) of the 20,000 advanced-degree registrations. Unselected registrations from the advanced-degree lottery are added to the electronic random selection process for the 65,000 general H-1B visas.

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7. What happens if my H-1B cap registration is selected?

USCIS will announce the completion of the initial lottery for the selected registrations by the end of March. If your registration is selected, then H-1B petition preparations need to continue and should be filed within a 90-day window as indicated by USCIS. There is a potential for a subsequent lottery later in the year if USCIS determines the number of approved petitions is below the number of visas available.

8. What do I need to prepare for the H-1B?

The demand for cap-subject H-1Bs continues to be high. Therefore, it is imperative that employers, employees, and their immigration counsel start petition preparations early.

Job descriptions, salary, O*Net occupation codes, Department of Labor (DOL) certification, posting of required notices, credential verification, immigration forms, support letters, and more, are details that must be considered during preparation.

9. Is there a way to expedite the processing?

Premium processing provides expedited handling of the petition for an additional fee (currently \$2,500). It allows you to know the status of your petition within fifteen calendar days from USCIS' acceptance of your filing. Regular processing can take between seven to eight months.

At times, USCIS suspends premium processing services. Thus, it might not be available for cap-subject H-1B filings.

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

H-1Bs are valid for three years. Extensions may be approved for an additional three years. Once an H-1B professional has been counted towards the H-1B cap, he or she can obtain H-1B extensions without regard to the cap.

For cases where H-1B beneficiaries have trouble getting a license for their petition due to a technical requirement, they may be approved for up to one year without the license. They may then file for an extension and show proof of their license to be approved for the remaining years.

H-1B professionals who are at certain stages of the permanent residence process (certified Labor Certification or approved I-140) can file to receive extensions beyond six years.

11. When can the employee begin working under the new cap-subject H-1B?

Upon approval of the H-1B petition, employees can start working in H-1B status on October 1, the start of the Fiscal Year.

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12. Who should apply for an H-1B visa?

- Foreign students in the United States in F-1 status who have received their degree. Often these students are in F-1/OPT or CPT at the time of the H-1B visa filing.
- Professionals abroad seeking to come and work in the United States.
- Foreign nationals in the United States with other valid statuses, such as H-4, L-1, TN (Mexican and Canadian citizens), E-3 (Australian citizens), H-4 (H-1B dependents), E-1/E-2 (investors), and P-1 (athletes).

13. What are the filing fees?

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:

- 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)

14. Who is responsible for paying the H-1B related fees?

The regulations provide that employers may not require an H-1B employee to pay for H-1B costs considered “employer’s business expense,” such as attorney fees and other costs connected to the H-1B filing and program functions.

15. Can a person self-petition for an H-1B?

No, the filing must show a valid employer-employee relationship.

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