

Frequently Asked Questions for H-1B Visas

What is H-1B Status?

The H-1B Temporary Worker status is a nonimmigrant immigration classification and is used to hire a foreign national professional for a temporary period of time.

How is H-1B status used at Brown University?

H-1B status is typically used for faculty and academic staff positions, such as postdoctoral associate, lecturer, and assistant professor. The H-1 B status is employer-specific. There must be an employer/employee relationship with the employer filing for H-1B status on behalf of the employee.

Who files the H-1B application on behalf of Brown University?

All H-1B requests must be processed through the Office of International Student and Scholar Services. Outside attorneys are not authorized to petition for H-1B status for any University employee.

Can H-1B status be used for any employment at Brown University?

No. The H-1B is valid ONLY for the position stated on the H-1B petition. The person holding H-1B status cannot accept any other employment in or out of the University.

For how long can someone be in H-1B status?

H-1B status is initially granted for a maximum period of three years and can be extended to a total of six years (regardless of the number of employers.) At Brown University, the period of the petition will reflect the period of the appointment.

Can a person holding H-1B status switch employers?

If an individual holds H-1B status and wants to change employers, the new employer must file a new H-1B petition (or petition for some other employment classification). However, time spent at Brown in H-1B status will count against the six year limitation. The individual may begin working for the new employer, under a new "portability" regulation (AC21), as soon as the new employer has filed their petition, and received Immigration's official notice of receipt.

Can a person in H-1B status give the occasional lecture/ seminar at another institution or place of business?

Persons in H-1B status may give lectures and seminars at other institutions, if the activity is incidental to his or her employment at Brown University. However, you may not accept compensation (pay) for them. The host may pay your expenses (i.e., transportation to the lecture, hotel, food, etc.), but may not pay you, for example, an honorarium. To accept this type of compensation is a violation of your immigration status.

Can a person in H-1B status at Brown University work for and receive payment from another employer?

Your H-1B status permits to work **ONLY** for Brown University and only for the job specified in the

original petition. You may not accept employment for any other employer unless that employer submits a “concurrent” H-1B petition.

What happens if there are changes in the terms of employment once the H-1B approval is received?

If there are changes in the terms of employment (including promotions, changes in duties, or change of departments), you must first consult with the Office of International Student and Scholar Services to determine whether an amended or new petition must be filed. If an amended petition is required, it will be necessary to initiate a new H-1B application.

Can a person have more than one H-1B petition at one time?

Yes. An individual may have multiple H-1B petitions at any one time. However, each employer must petition for the H-1B status.

What steps are involved in filing an H-1B petition?

There are two steps involved in acquiring H-1 B status. The first involves the Department of Labor (DOL) and requires an attestation from Brown University that the "prevailing wage" for the particular position is being paid. Upon receipt of an approved Labor Condition Application, the actual H-1B application is submitted to the United States Citizenship and Immigration Services (USCIS.) This application includes documentation about the nature of the position and the individual's qualifications. If approved, the individual must obtain the H-1B visa overseas or have an USCIS approved change of status to H-1B.

What are the obligations of the employer filing the H-1B petition?

The employer, in this case Brown University or an affiliated hospital, is responsible for paying the reasonable costs of the return transportation to the home country for an H-1B who is dismissed prior to the expiration of the current H-1B authorization. The employer must also post a Notice of H-1B Filing for ten days in two campus locations at each work site where the applicant will work. The department is responsible for maintaining all conditions of the Labor Condition Application and the petition, including payment of the stated salary.

What happens if a person is terminated from their position while in H-1B status?

The H-1B status is employment-based status and immediately ends on upon termination of employment. Although the Form I-797 (USCIS approval notice) may indicate a date well into the future, it will become invalid upon termination of employment. If you are moving to another employer, the new employer must file (and USCIS must receive) the new petition BEFORE the date of termination.

How long does it take to process and H-1B petition?

The entire process can take four to six months to complete. With the payment of a premium processing fee to USCIS, the process can be concluded in a shorter period of time.

How far before the date of employment can the H-1B petition be submitted?

H-1B petitions can be submitted up to six (6) months prior to the date employment will begin (in the case of new petitions), or the expiration of the current H-1B status (in the case of extensions).

Is a person currently in J-1 status eligible to change to H-1B status?

A person holding J-1 status (an exchange visitor) who is subject to the two-year residency requirement is precluded from acquiring H-1B status until or unless the requirement has been fulfilled or waived.

What status do dependent spouses and children of H-1B holders have?

Dependents of H-1B temporary workers have H-4 status. Persons in H-4 status cannot work in the U.S.

How does a person in H-1B status travel outside the U.S.?

Anytime you depart the U.S. for any country other than Canada or Mexico, it is important that you surrender your I-94 card (the small white card stapled in your passport) to the airline or other port-of-departure official. In order to return to the U.S. in H-1B status, you must have a valid H-1B visa, a passport that is valid for at least six months into the future from the date of your entry, and the I-797 Approval Notice.

When re-entering the U.S., take a close look at the new I-94 card given to you by the port of entry inspector to be certain that you have been admitted for the proper duration of time. If the date written on the I-94 card by the port of entry inspector does not match the end date of your I-797 Approval Notice, please ask the inspector why she/he chose this date and to correct, if possible. If the inspector cannot correct it, or if you notice this discrepancy too late to speak with the inspector, please bring it the attention of the Office of International Student and Scholar Services *immediately*. It is important to note that the port of entry inspector is permitted to admit you for a period up to ten (10) days beyond the end date of the Approval Notice, though few inspectors choose to grant this extra "grace period." If you are granted the extra ten days to remain in the U.S., you must still cease employment on the end date of your I-797 Approval Notice.

Can a person currently holding H-1B status extend their H-1B status?

Brown University is permitted to apply for H-1B approval for periods of up to three (3) years initially. Any number of extensions can be requested through additional petitions until the total time in H status reaches six (6) years. Where possible, OISSS will petition for an initial period of three years, then petition for an extension for the remaining three years. However, periods of employment are dictated by the academic appointment. The scope of the position, time spent in H status previously, funding and many other factors are all considered for the period requested for H-1B approval. Requests for extensions should be submitted to OISSS by the scholar and the hiring department at least six months prior to the expiration of the current I-797 Approval Notice.

Are there any limitations with H-1B visas?

You are permitted to be in the U.S. in H status for a total of six (6) years. This time limitation includes any time you spent in H-4 or any other H status. At the end of six years, you must either change to another immigration status or depart the U.S. Once you have remained outside the U.S. for at least one year, an employer may obtain a new H-1B approval for you and you may once again enter the U.S. to begin another six years.

Can the USCIS process be expedited?

USCIS now offers expedited processing in the case of certain petitions. The USCIS Premium Processing Unit guarantees review of cases submitted, within 15 calendar days of the receipt of the application. The request for premium processing can take place at the time the H-1B application is filed, or, during the pending petition process, once the official receipt notice arrives. Either the hiring department or the applicant may pay the fee for this service, which is \$1,000. This fee is "in addition to" the standard processing fee of \$190.