

Introduction to Immigration: The H-1B Visa

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Immigration Basics

- What are the different categories of visas?
 - Immigrant (aliens):
 - Intending to stay in US and have attained permanent residence of a green card
 - Non-Immigrant:
 - Non-citizens wishing to be in US on a temporary basis
- Who is the Beneficiary/Applicant?
 - The individual for whom application is being filed.



Immigration Basics (cont.)

- Who is the Petitioner?
 - The employer who is filing the application on behalf of the applicant/beneficiary.
- What is an Expiration Date?
 - All non-immigrant visas have a time limitation for their status.
 - When an approval notice is received, it will indicate the time span for that specified visa.



The H-1B Work Visa

What is it?



The H-1B - *What is it?*

- A temporary nonimmigrant work visa
- Allows foreign nationals to enter the U.S. on a temporary basis to work for a U.S. employer
- Employer specific
 - Work authorization granted only for the employer named in the visa.
- “Dual Intent”
 - The holder can apply for permanent residence as an H-1B holder.



The H-1B - *Who is Qualified?*

- Those who fall under a “***specialty occupation***”
- A “specialty occupation” requires:
 - At least a Bachelor’s degree (or its equivalent in terms of education and/or experience)
 - The theoretical and practical application of a body of highly specialized knowledge



H-1B Filing Requirements

- Forms:
 - The **G-28** is the Attorney's Notice of Appearance
 - This establishes the attorney-client relationship.
 - The **I-129** is the Petition for a Nonimmigrant Worker
 - This describes the proposed employment, including the term of the H-1B, the rate of pay and the employee's current immigration status.
 - The **I-129H** and **I-129W**
 - These provide information on the employee's immigration history and help determine the applicable fees.



H-1B Filing Requirements (cont.)

- The ETA-9035 Labor Condition Application
 - An attestation from the employer regarding the proposed wage and work location, as well as confirmation that the employee's wage meets federal standards.
 - The form is additionally filed with the US Department of Labor.
- The Letter of Support
 - More fully describes the proposed employment and states the employee's explicit qualifications.



H-1B Filing Requirements (cont.)

- Supporting Documents:
 - Evidence of Bachelor's degree
 - Company information
 - Passport
 - Pay stubs
- Applicable filing fees

Types of H-1Bs

- Standard
- Transfer
- Dependant Employer
- Exempt Extension



Sample of Approval Notice:



RECEIPT NUMBER	CLASS/TYPE
RECEIPT DATE December 20, 2006	PRIORITY DATE
NOTICE DATE December 29, 2006	FAIR
	PROBATIONARY

AMERICAN SVCS NETWORK PC
PC:
350 N LASALLE ST STE 1400
CHICAGO IL 60610-4726

Notice Type: Approval Notice
Class: H1B
Valid from 01/08/2007 to 01/07/2010

The above classification and extension of stay have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. The worker(s) in permanent status is a new position. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IRS with any questions about tax withholding.


The petitioner should keep the upper portion of this notice. The upper portion should be given to the worker(s) and the worker(s) should keep the right part with his or her Form I-94, *Arrival/Departure Record*. This should be laminated with the I-94 when departing the U.S. The left portion for the foreign worker(s). A person granted an extension of stay who leaves the U.S. must return to obtain a new visa before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she does not need it, along with any other required documentation, when applying for entry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-765, *Application for Action on an Approval Application or Petition*, with this notice to request that he or she be notified, prior to entry, of pre-flight inspection status of this approval.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the foreign worker(s) will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA AND MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other issues you filed.

U.S. CITIZENSHIP & IMMIGRATION SVC
CALIFORNIA SERVICE CENTER
P. O. BOX 30211
ELCURE HUNTEL CA 92407-0111
Customer Service Telephone: (800) 375-5283
Form I797A (Rev. 09/07/93)N



PLEASE TEAR OFF FOLK ON PRINTED BELOW, AND STAPLE TO ORIGINAL COPY.

Detach This Half for Personal Records

Receipt #
I-94#

NAME

CLASS #1B

VALID FROM 01/08/2007 UNTIL 01/07/2010

PETITIONER:

Receipt Number
Immigration and
Naturalization Service

I-94
Departure Record

Petitioner:

1) Date Here	10. Dec of 2006
2) Foreign State	6.1/02/1972
3) Class of Country	KORER, SOUTH



Terms of Stay

- H-1B status can be renewed for a period up to 6 years, approved in 3-year increments (includes time with prior employers in H or L status)
 - An ongoing green card process may allow an employee to extend their H-1B past the six-year limit.
 - If the employee works only seasonally, intermittently, or less than a total of 6 months a year, they are exempted from the 6-year maximum.



Employee Start Date

- “New” H-1B employees (employees who are not currently in H-1B status) must wait for approval on their H-1B filings before they can begin work.
- Employees extending current H-1B visas may continue working without interruption by filing extensions before the upcoming expiration date.
- Employees transferring existing H-1B visas (from one employer to another) may begin work with the new employer as soon as the transfer petition is received by the USCIS.



What is the H-1B cap?

- Congress regulates the number of H-1B visas that are to be issued annually.
- The visas are regulated per fiscal year, and are governed by a cap.
 - The cap allows for 65,000 visas per fiscal year.
 - Only “new” H-1B visas are subject to the cap.
 - Extensions or transfers (to new employers) of existing H-1B visas are not subject to the cap, and can be filed at any point in time.



Employee's Family Members

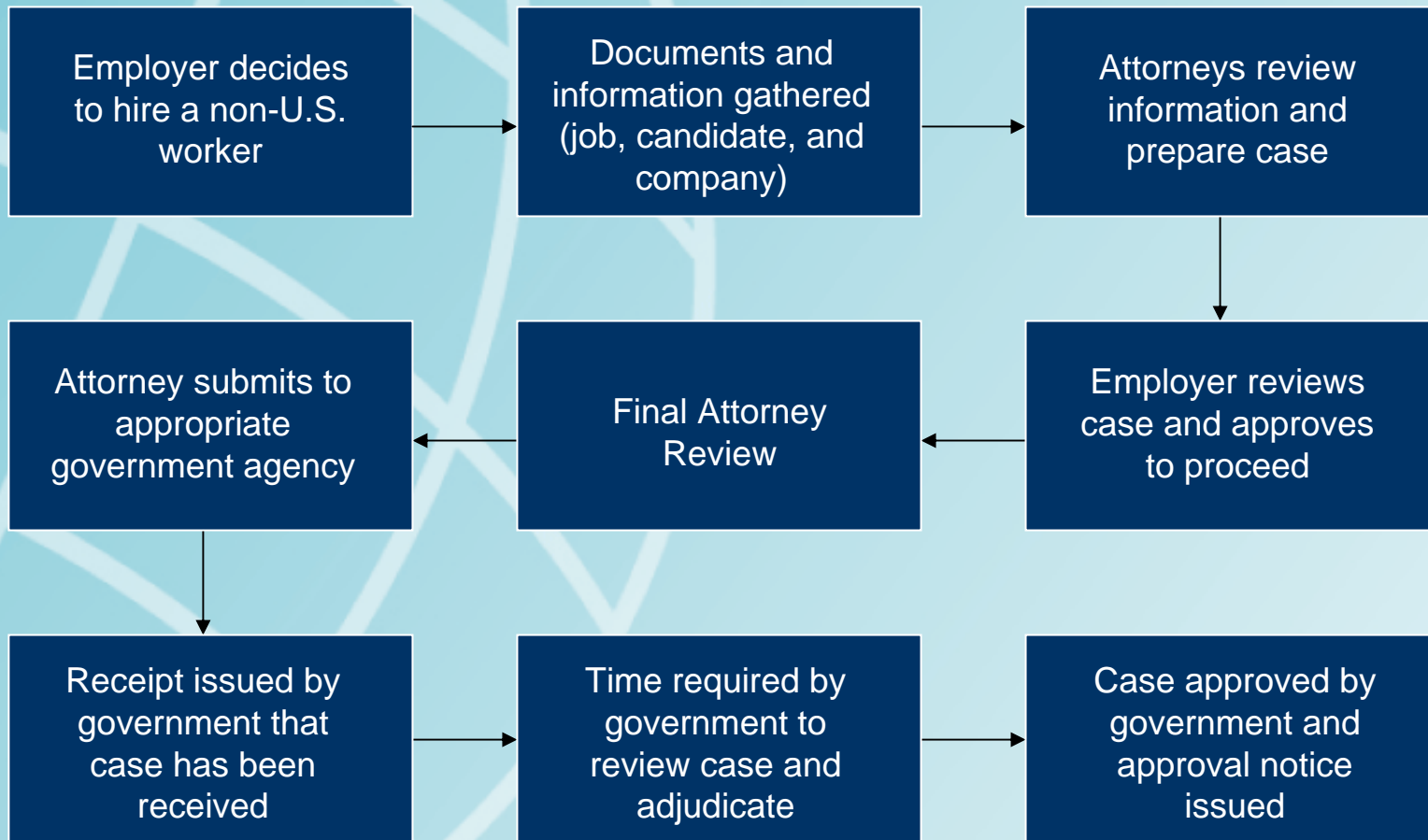
- H-1B employees' dependants can be granted **H-4 visas** for parallel admission to the U.S.
 - The H-4 is not a work authorization.
 - Dependants who wish to work in the U.S. would need to obtain independent work authorizations.



The Basic Visa Application Process



Basic Application Process



Rules of Thumb

- Be sure you know when an employee can begin working for you.
- Make sure you know which documents must be stored and for how long.
- Know what types of activities certain visas are limited to.
- Ensure that all filings reflect what is actually true for the company and the employee.
- Know what the laws are concerning the foreign worker's salary.



Rules of Thumb (cont.)

- Track expiration dates carefully.
- Know that certain processes rely on good timing
- Consistently apply your employment policies.
- Always pay the correct filing fees.
- Know when you have to consult an immigration or employment law attorney.



Contact Us

- For further information regarding the H-1B visa or to learn how we can streamline your immigration process, contact us at:
 - 1.888.4VISANOW
 - info@visanow.com

