

Immigration Laws and the Employment Process for International Students

The purpose of this information is to provide guidance to students wishing to become employed. It includes information about federal regulations that affect the hiring of international students, including those of the Department of Homeland Security and the Department of Labor. Students who need further assistance in understanding the complexities of employment in the United States should consult with an Advisor in UC International Services.

SECTION ONE: DEFINITION OF IMPORTANT TERMS

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1.1 Department of Homeland Security (DHS)

The Department of Homeland Security is a cabinet level department responsible for securing the nation's borders and managing the immigration process. DHS assumes responsibilities for activities and services previously handled by the Immigration and Naturalization Service. The DHS has divided immigration services and border enforcement into separate agencies.

1.2 U.S. Citizenship and Immigration Services (CIS)

An agency within the Department of Homeland Security with jurisdiction over the status of non-immigrants within the boundaries of the U.S. This agency has direct oversight of immigration related benefits including change of status, employment authorization, etc.

1.3 U.S. Immigration and Customs Enforcement (ICE)

An Agency within the Department of Homeland Security with jurisdiction over immigration enforcement issues. This is the agency with direct oversight of the Student and Exchange Visitor Information System (SEVIS) program.

1.4 U.S. Customs and Border Protection (CBP)

An agency within the Department of Homeland Security responsible for inspections at U.S. ports of entry, for the border patrol, and for the Customs Service.

1.5 U.S. Department of State (DOS)

The government agency responsible for issuing U.S. visa's. This agency is also responsible for oversight of the J-1 Exchange Visitor Program, including waivers of the two year home residency requirement.

1.6 Department of Labor (DOL)

The Department of Labor is the government agency with oversight of U.S. labor laws. The DOL has direct authority over H-1B Specialty Worker laws with respect to prevailing wages.

1.7 Internal Revenue Service (IRS)

The Internal Revenue Service (IRS) is the U.S. government agency that collects taxes. The IRS issues various forms (withholding allowance certificates, income tax returns, etc.) which are used to help international visitors pay the taxes that apply to them. The IRS also determines how much an individual owes in taxes, and whether an organization that pays income to an international visitor is required to withhold specific amounts from that income.

1.8 The Student and Exchange Visitor Information System (SEVIS)

The Student and Exchange Visitor Information System (SEVIS) is an electronic reporting and record-keeping system for non-immigrant students (F-1) and exchange visitors (J-1). SEVIS has direct connections to ICE officers and U.S. embassies and consulates abroad. SEVIS requires schools and exchange visitor programs to record, on an "events-based" schedule, I-20 and DS-2019 issuance, work recommendations and authorizations, student violations, etc.

1.9 Employee Wages

Employee wages are payments for services that an individual performs or carries out as an employee and are generally taxable unless excludable under a tax treaty. Employee wages are not the same as payments made to an independent contractor. **Employee wages can only be paid to workers who have been granted an appropriate employment authorization and immigration status.**

1.10 Independent Contractor Payments

Independent contractor payments are for services performed by workers which are outside the scope of employment and are taxable unless excludable under a tax treaty. Independent contractors are not the same as employees. Services as an independent contractor must have all of the following characteristics:

- * The international visitor must not be under the direction or control of any employee in regard to the means or methods that are being used to perform services.
- * The service or task being performed is of short duration and will not result in the international visitor entering a long-term working relationship.
- * A written contract or agreement exists that identifies the services that are to be performed.

Independent contractor payments can only be made to workers who have been granted the appropriate work authorization and immigration status.

1.11 Passport

A **passport** is the document that proves the citizenship of the international visitor. It must remain valid at all times while the international visitor is in the U.S.

1.12 Visa

A **visa** is a stamp placed in the passport of the international visitor by an official of the Department of State permitting entry. All international visitors entering the U.S. must have a valid visa stamp. There are two exceptions to this rule: (1) Canadian nationals are not required to have a passport or visa; and (2) other international visitors who qualify for and enter on the visa waiver program are not issued a visa. The visa stamp is the most misunderstood of all visa documents. It does not need to remain valid throughout the visitor's stay and it doesn't necessarily reflect a visitor's current immigration status. A visa stamp needs to be valid only when a visitor needs to enter the U.S. Only the I-94 card and/or certificate of eligibility must be valid throughout a visitor's stay.

1.13 I-94 Card

All international visitors are given an **I-94** card (arrival/departure record) at the port of entry. The I-94 is a small square card that is placed in the passport of the international visitor and indicates the visa classification. For all international visitors except those on visa waivers, the I-94 card will be white. The I-94 card will be green for visa waiver holders. The I-94 card dictates how long an international visitor is permitted to stay.

1.14 Certificate of Eligibility

International visitors on F-1 or J-1 status will have a **certificate of eligibility** for non-immigrant visa status. This certificate may be a Form I-20 for F-1 degree seeking students or Form DS-2019 for J-1 Exchange visitors. The certificate of eligibility details

the activities the visitor will be engaged in while in the U.S., at what institution and for how long.

1.15 Employment Authorization Document (EAD)

Certain international visitors authorized to work will have an **Employment Authorization Document (EAD)**. An EAD is a laminated picture I.D. card issued by the CIS authorizing the holder to accept employment. All EAD's have a start and end date. The EAD must be valid for the international visitor to use it for employment verification. Students on Optional Practical Training, certain dependents (J-2, L-2, etc.) who are eligible to work, and those in the final stages of obtaining permanent residence will have EAD's.

SECTION TWO: IMMIGRATION STATUSES THAT ALLOW FOR WORK

- 2.1 Introduction
- 2.2 Different Statuses Allow Work Eligibility

2.1 Introduction

What follows is a list of immigration statuses that allow work eligibility. Not all immigration statuses allow international visitors to work and most have precise start and end dates. It is important that workers understand when their current work authorization expires and take steps to have that employment status extended within the proper time frame.

2.2 Different Statuses

F-1 An academic or language student. F-1 students can work on campus while enrolled 20 hours per week while school is session. There is no hourly limitation during scheduled breaks. F-1 students can also work under Optional Practical Training (discussed further in section three below). All F-1 students are eligible for 12 months of OPT employment for each higher degree level they obtain. In addition, students with degrees in Science and Technology, Engineering and Mathematics can receive as additional seventeen (17) month extension (29 total months of OPT) if their employer participates in the E-verify program operated by the Department of Homeland Security and the Social Security Administration. Students on OPT must have an Employment authorization document (EAD) to work. F-1 students can also work under Curricular Practical Training (CPT) when their program of study (course requirement, thesis/dissertation research) requires an internship or co-op. UC International Services must authorize the CPT employment on page three of the student's I-20 prior to the start of employment.

- H-1B A worker authorized to perform services in a specialty occupation. The position must require a bachelor's degree or higher in a specific field of study. Workers can spend six (6) years in the classification. Extensions beyond the six year limit are available if an employer has initiated green card efforts prior to the end of the fifth year of H-1B status.
- J-1 An Exchange Visitor authorized to work for an institution that has been designated by the U.S. Department of State as a J-1 program sponsor. Such institutions are typically educational institutions or governmental or non-profit research organizations.
- J-2 Spouse or dependent child of J-1 exchange visitor. J-2 dependents can work provided they have obtained an Employment Authorization Document from the Department of Homeland Security.
- L-1 An Intra company transferee is an employee who within the preceding three years has been employed abroad for one continuous year by a qualifying organization in a managerial or executive capacity, or in a position requiring specialized knowledge. The U.S. employer must have established branches or affiliates in another country for more than a year to qualify.
- L-2 Spouse or dependent child of L-1. The spouse can work provided they have obtained an Employment Authorization Document from the Department of Homeland Security. Other L-2 dependents, such as minor children, are not eligible for employment authorization.
- O-1 An employment category for persons of extraordinary ability. O-1 status is an excellent option for persons subject to the two year home residency requirement who are not eligible for H-1B specialty worker status or L-1 intracompany transferee status. O-1 applicants must demonstrate that they have made outstanding contributions in their field and they have risen to the top of their field and enjoy sustained national or international acclaim.
- P-1 Internationally recognized athlete or entertainer.
- R-1 Religious worker entering the U.S. to perform ministerial or other religious work.
- TN Canadians/Mexicans admitted for employment under the terms of the North American Free Trade Agreement (NAFTA). The type of employment must be included on the approved list of occupations and cannot exceed one year in duration, although the employment can be renewed multiple times. This is a good employment option for Canadians when the H-1B cap is reached.

SECTION THREE: INTERNATIONAL STUDENTS

- 3.1 General Provisions
- 3.2 Frequently Asked Questions for Employing International Students
- 3.3 Practical Training for F-1 Students
- 3.4 On-Campus Employment for F-1 Students
- 3.5 J-1 Student Employment

3.1 General Provisions

International visitors admitted to the U.S. to pursue a prescribed full course of study are classified as F-1 or J-1. Students pursuing full-time degree programs are most typically classified as F-1. J-1 students are typically sponsored financially by the U.S. government or their home government.

F-1 and J-1 students must be coming to the United States solely to pursue a full-course of academic, language, or other non-vocational study. Nevertheless, F-1 and J-1 students may work under certain circumstances. Essentially, F-1 student employment can be divided into three distinct categories: practical training, off-campus, and on-campus. There are two types of employment authorizations available for students on J-1 status: student employment and academic training. The difference between the two is that student employment occurs on-campus unless there is economic necessity. Academic training is related to the student's field of study and in most cases occurs off-campus and for a specified period of time.

Certain types of student employment are authorized with a DHS Employment Authorization Document (EAD) including OPT, Economic Hardship, Special Student Relief. Other types are authorized by a DSO at the school the student attends (CPT and Academic Training).

3.2 Frequently Asked Questions For Employing International Students

Isn't it illegal for a company to hire me if I do not have a green card?

No. Federal regulations permit the employment of international students on F-1 and J-1 visas within certain limits in jobs related to their major field of study. F-1 students can work on "practical training." J-1 students may work on "academic training" Both F-1 and J-1 students can work on the campus of the school they are authorized to attend.

Will it cost a lot of money and involve a lot of paperwork for an employer to hire me?

No. The only cost to the employer hiring international students is the time and effort to interview and select the best candidate for the job. The international student office

handles the paperwork involved in securing the work authorization for F-1 and J-1 students. In fact, a company may save money by hiring international students because the majority of them are exempt from Social Security (FICA) and Medicare tax requirements. For curricular practical training, the school will make a notation on the students' copy of the I-20 form indicating that curricular practical training has been authorized, and specifying the duration and place of employment. Students authorized for optional practical training are required to apply to the DHS (through the school) for an Employment Authorization Document (EAD). Academic training for J-1 students is authorized in writing by the school's Responsible/Alternate Responsible Officer.

How long can I work in the United States with my student status?

F-1 students may be eligible for curricular practical training before completing their studies, as well as an additional 12 months of optional practical training, either before or following graduation, or a combination of the two. However, if they work full-time for one year or more of curricular practical training, they are not eligible for Optional Practical Training. F-1 students can receive 12 months of Optional Practical Training for each higher degree level they receive. In addition, students with degrees in Science and Technology, Engineering and Mathematics can receive an additional seventeen (17) month extension (29 total months of OPT) if their employer participates in the E-verify program operated by the Department of Homeland Security and the Social Security Administration. Both categories of practical training will be explained in greater detail later.

Students with a J-1 visa are usually eligible to work up to 18 months following graduation, three years if the student obtains a doctoral degree. They may also be eligible to work part-time during their program of study. The Responsible Officer (RO) or Alternate Responsible Officer (ARO) will evaluate each student's situation to determine the length of time for which they are eligible to work. Academic training will be covered in more detail later.

Don't I need my work authorization before I can be hired ?

No. International students must have the work authorization before they begin actual employment, but not before they are offered employment. In fact, J-1 students must have a written job offer in order to apply for the work authorization. Many F-1 students will be in the process of obtaining work authorization while they are interviewing for employment. F-1 students can give employers a reasonable estimate of when they expect to receive work authorization (typically 90 days from the date of application). J-1 students can receive their work authorization sooner.

What does the work authorization look like?

For Optional Practical Training, F-1 students receive from the DHS an Employment Authorization Document (EAD), a small photo identity card that indicates the dates for which they are permitted to work. For Curricular Practical Training, F-1 students receive

authorization from the school (NOT from the DHS) on the back of the student's I-20. "No Service endorsement" is necessary – per 8CFR 274a.12(b)(6)(iii). J-1 students receive work authorization in the form of a letter issued by the RO or ARO at their institution.

Doesn't an employer have to prove that I am not taking jobs from a qualified American?

No. American employers are not required to document that a citizen of another country did not take a job from a qualified American if that person is working under a F-1, J-1, or H-1B status. Employers must document that they did not turn down a qualified American applicant for the position only when they wish to hire foreign citizens on a permanent basis and sponsor them for a permanent resident status ("green card").

How can employment continue after the practical/academic training period?

Federal regulations require that employment terminate at the conclusion of the authorized practical or academic training. However, students on an F-1 visa, or students on a J-1 visa who are not subject to a two-year home residency requirement, may continue to be employed, if they receive approval for a change in visa category – usually to H-1B. Students must have a minimum of a bachelor's degree in order to qualify for H-1B status. Individuals may work in the United States for a maximum of six years under an H-1B visa. This visa is valid only for employment with the company that petitioned for them. If they wish to change employers, the new employer must re-apply to the DHS.

3.3 Practical Training for F-1 Students

Practical training is a legal means by which F-1 students can obtain employment in areas related to their academic field of study. Students, in general, must have completed one academic year (approximately nine months) in F-1 status and must maintain their F-1 status to be eligible for practical training. There are two types of practical training:

- Optional Practical Training
- Curricular Practical Training

3.3.1 Optional Practical Training (OPT)

Optional Practical Training (OPT) must be authorized by U.S. Citizenship and Immigration Services (CIS) based on a recommendation from the designated school official (DSO) at the school which issued the form I-20, a government document which verifies the student's admission to that institution. The term "optional" means that the student can use all or part of their total practical training allotment up to a maximum of 12 months. OPT can be authorized by the CIS: (1) during vacation when school is not in session – full-time or part-time employment is allowed; (2) for part-time work, a maximum of 20 hours per week, while school is in session; (3) after completing all course requirements for the degree (full-time or part-time); or (4) full-time after

completion of the course of study. Students can obtain 12 months of OPT for each higher degree level obtained. In addition, students with degrees in Science and Technology, Engineering and Mathematics can receive as additional seventeen (17) month extension (29 total months of OPT) if their employer participates in the E-verify program operated by the Department of Homeland Security and the Social Security Administration.

Employment is authorized on an Employment Authorization Document (EAD). The student's name, photo and validity dates of employment are printed on the EAD. Employers should note that the average processing time for CIS to issue the EAD is three months. Employers should also be aware that the amount of time it takes the CIS to approve the EAD is beyond the control of the student or the school. Delays of 90 days or more are typical during the summer months.

Optional practical training employment must be related to the student's field of study. A speech communication major, for example, is not eligible to work as a computer programmer on OPT. While on OPT a student may travel if required or desired. The student will need the EAD, a letter from the employer certifying that the student is employed, and the student must have his/her form I-20 endorsed by the DSO within the previous 6 months. Unless going to Canada, Mexico or contiguous territories for 30 days or less, the student will also need a valid F-1 visa. Students with an expired F-1 visa are cautioned not to travel while on OPT. Obtaining an F-1 visa while on OPT is difficult.

3.3.2 Curricular Practical Training (CPT)

Curricular Practical Training (CPT) may be authorized by the institution (NOT by CIS) for F-1 students participating in curricular-related employment such as cooperative education, work study, practicum and internship programs. Authorization is written on page three (3) of the I-20 student copy and will include the name and location of the company, beginning and ending employment date, hours to be worked (full-time is anything over 20 hours per week; part-time is 20 hours per week or less) and signature of the Designated School Official. Since each institution has different policies related to curricular practical employment, students should speak to the DSO at their institution. Processing time for the authorization of CPT varies at each institution.

At a minimum, qualifying curricular practical training involves courses that carry academic credit, are listed in the school's regular bulletin of course offerings and has a faculty member assigned to teach the course. It is particularly important that any employment experience required by the course be instrumental to achieving a curricular academic objective. Another example of curricular practical training would be a graduate student engaged in research that is part of a thesis or dissertation. The research should involve innovative technology available only at a particular corporation's research facilities or to collect data essential for completion of a thesis or dissertation. Students must complete one academic year (9 months) as a full-time student before they are eligible to start curricular practical training and be F-1 at the time of application. The only exception to the 9 month rule is graduate students who are required to start a coop or internship prior to completing one academic year of study.

The student's I-20 form, I-94 card and unexpired foreign passport is the employment authorization. No authorization is needed from the USCIS. Students are not limited in the amount of curricular practical training they may utilize. However, students who have engaged in one year or more of full-time curricular practical training are ineligible for optional practical training.

3.4 On-Campus Employment For F-1 Students

All F-1 students are eligible to work on campus premises 20 hours a week while school is in session and full-time during scheduled breaks. In addition to on-campus employment on the school's premises, such as a research assistantship, or a work/study job in the cafeteria, the regulations provide for on-campus employment which takes place at an off-campus location "educationally affiliated with the school." In the case of off-campus locations, the employment must also be "associated with the school's established curriculum or related to contractually funded research projects at the post-graduate level." Figuring out what "associated with the school's established curriculum" means and how such employment may be "related" to a contractually funded research project may seem like more trouble than it is worth. However, there are a number of benefits associated with on-campus employment at an "off-campus" location that may make the effort valuable. First, students are eligible to begin employment immediately upon being admitted to the United States in F-1 status. Pursuant to Department of State regulations, this may be as much as thirty days before classes begin. Second, there is no limit to the total period of on-campus employment in which students may engage. Thus a student may work up to twenty hours a week while school is in session and full-time during any vacation periods for as many years as he or she is pursuing a full course of study and not foreclose on other employment options. Third, permission to undertake on-campus employment is considered by the CIS to be incidental to status and, therefore, requires no additional authorization from either the DSO or the CIS.

3.5 J-1 Student Employment

J-1 student employment essentially can be classified in three ways:

1. Scholarship, Fellowship or Assistantship: This is employment that is required in return for receiving a scholarship, fellowship or an assistantship. Such work usually occurs on campus with the school as the employer. In certain circumstances, however, the work can be done elsewhere for a different employer. For example: exchange visitors may work in a government or private research laboratory if the exchange visitor's major professor (e.g. department chair) has a joint appointment at one of those locations and the employment is supervised and counts toward the exchange visitor's degree.
2. On-Campus: The Exchange Visitor Program regulations allow for jobs on-campus that are related/unrelated to study, which stipulate that the work can be done "on the premises" of the school. This means that the school does not have to be the

- employer. For example: exchange visitors work for a commercial company, such as a food service, operating on the campus.
3. Off-Campus: Exchange visitors may be authorized for off-campus employment when necessary due to “serious, urgent and unforeseen economic circumstances” that have arisen since the exchange visitor’s sponsorship on the J-1 visa. Such employment will be authorized in writing by a Responsible Officer (RO) or Alternate Responsible Officer (ARO) indicating the name and address of the employer and the dates of employment.

3.5.1 J-1 Academic Training

Practical training for J-1 students is called “academic training.” International students on J-1 visas are eligible for up to 18 months of academic training. Post-doctoral students are permitted three years of academic training. Some J-1 students are also allowed to work part-time during the academic program under academic training. Academic training is granted in writing by the RO or ARO at the institution the student is attending. Students should consult with the RO or ARO at their institution.

SECTION FOUR: H-1B SPECIALTY WORKERS

- 4.1 Introduction
- 4.2 Frequently Asked Questions About the H-1B Temporary Work Status
- 4.3 Requirements for H-1B Status
- 4.4 Period of Authorized Stay in the U.S.
- 4.5 Numerical Limitation on H-1B Non-immigrants
- 4.6 Miscellaneous Matters
- 4.7 H-1B Specialty Worker Application Checklist

4.1 Introduction

H-1B specialty workers are international visitors who have skills and experience of a special nature that require at least a bachelor’s degree or equivalent combination of education and experience. An applicant is not permitted to begin work for an employer until an H-1B is approved for the employer. There is an exception for individuals who currently hold H-1B status for another employer. H-1B employees have a maximum stay of six (6) years in the category no matter how many different employers they have. Employment can be granted for a maximum of three (3) year increments. Extensions beyond the six year limit are available if an employer has initiated green card efforts prior to the end of the fifth year of H-1B status. See section below for further information.

H-1B employers are required to complete the Labor Condition Application (“LCA”) procedure through the U.S. Department of Labor (“DOL”) and to maintain documentation in support of the attestations made on the LCA. H-1B employers who dismiss an H-1B employee for any cause prior to the expiration of his or her authorized stay in the United States in the H-1B classification must pay the reasonable costs of

return transportation to his/her last foreign residency. The DOL limits the number of approvals of new petitions in the H-1B classification to 65,000 per year. An additional 20,000 petitions can be approved for individuals who have obtained a Master's degree or higher from a U.S. institution.

4.2 Frequently Asked Questions About H-1B Temporary Work Status

What is an H-1B visa?

The H-1B program is the primary method for temporarily employing professional level foreign employees in the United States. H-1B category is for workers in “specialty occupations” – jobs that require at least a four-year university degree in a specific field. Although the term “H-1B visa” is frequently used to describe this category of work authorization, the term “visa” relates only to the document a foreign worker must show to the immigration inspector when seeking to enter the U.S. Once here, the foreign worker is given another document (which is not a visa) that indicates the worker's H-1B employment-authorized immigration status and the expiration date of their authorized stay in the United States.

When would an employer hire me using the H-1B program?

The H-1B category is appropriate for most situations where the employer must quickly fill a complex position that is likely to continue for up to several years. If the foreign candidate has an appropriate bachelor-level or higher degree or equivalent experience and if such a degree is the employer's minimum educational requirement for the position, and if the intended wage meets the Department of Labor (DOL) prevailing wage requirements, the H-1B category may be the best option.

Is there a quota limiting the number of new H-1B workers?

Yes. Currently, there is an annual quota for new H-1B workers. If the quota is reached, H-1B's for new H-1B workers may not be available again until October 1st, when the U.S. Citizenship and Immigration Services (USCIS) next fiscal year begins. Employers hiring workers who are already in the U.S. working in H-1B status, colleges and universities, and certain non-profit research organizations are exempt from the quota. The current quota is 65,000. An additional 20,000 H-1B's can be approved for individuals who have obtained a Master's degree or higher from a U.S. institution. Employer must be prepared to file H-1B petitions subject to the cap on April 1 or as close to April 1 as possible.

Must the employer demonstrate that there is a shortage of qualified U.S. workers to hire me on H-1B status?

No. Unless the employer is H-1B dependent, the H-1B employer need not advertise or show an effort to hire U.S. workers. H-1B rules seek to protect U.S. workers primarily through H-1B wage requirements.

What legal requirements must the employer satisfy to be eligible to employ me on H-1B status?

The employer must first establish that a specific bachelor-level or higher degree or equivalent is the employer's minimum requirement for the position, and that it will pay the prevailing wage for that position in the area of intended employment. In addition, the H-1B program requires that an employer pay H-1B workers at least as much as its similarly employed workers with comparable qualifications. The employer must notify other workers in the occupational classification at the intended location of employment that an H-1B worker is being hired to fill the position and will be paid at least a certain specified wage. The employer must attest to the above requirements on forms filed with the U.S. Department of Labor and the U.S. Citizenship and Immigration Services.

What legal requirements must the employee satisfy to be eligible to use H-1B work status?

The employee candidate must document their educational credentials, and meet the normal screening criteria for entering the U.S. or changing from another immigration status in the U.S. If a candidate has a history of immigration violations or criminal activities, the H-1B status may be denied. If an H-1B candidate does not have a bachelors degree, it may be possible to document experience that is considered equivalent to the degree. If the candidate is outside the U.S., and does not hold a valid H-1B visa, she or he must present the employer's H-1B approval notice along with other visa application materials to a U.S. embassy or consulate outside the U.S. and receive an H-1B visa before entering the U.S. for employment.

How long is an H-1B valid?

The initial petition for an individual worker can be approved for up to three years. The validity of an H-1B petition is linked to the particular employer, employee, job duties, location and wage. If there are material changes in the terms of employment or the legal identity of the employer during the petition period, the H-1B may be considered automatically invalidated. If the employee engages in work activities not authorized on the petition, the employee is in violation of U.S. laws and potentially deportable. The employer may request an extension for up to an additional three years. However, most foreign workers are subject to a six-year limit in H-1B status. Any time spent working under a previous employer's H-1B petition will count toward the six year limit in H-1B status. In some cases, it is possible to get permission to exceed the six-year limit on H-1B status. For example, if the green card process is initiated before the end of the employee's fifth year of H-1B status, extensions of H-1B status in one year increments are available until the green card application is decided. Those who are the beneficiaries of an approved I-140 are eligible for additional H-1B time in three year increments if the priority date is not current.

How long does it take to get an H-1B petition approved?

Currently, a reasonable window of expectation is about two to three months. Because each H-1B petition revolves around facts related to the individual candidate, as well as to the employer and the position, there is some variation in the preparation and processing time needed for H-1B cases. By paying an extra \$1,000 expedited processing fee to U.S. Citizenship and Immigration Services, an employer can anticipate H-1B petition processing within fifteen (15) calendar days and can be filed no earlier than 4 months prior to start date. If the annual quota for new H-1B workers is reached, processing could be delayed until October 1st, when the next fiscal year begins. If the candidate is outside the United States, processing times can be increased by several weeks or months while the U.S. government completes security clearances and consular visa processing.

Does an H-1B automatically turn into a green card?

No. The process of the green card sponsorship is almost entirely separate from the H-1B process.

Many employers choose to sponsor their H-1B workers for permanent resident (“green card”) status, starting the process at least several years prior to the end of the sixth year, in order to preserve alternate employment authorization while the green card application is pending. Starting the permanent residence sponsorship process within six (6) months or less after the first approval of H-1B status often provides significant immigration advantages to both the employer and the employee. Unlike certain other non-immigrant statuses, such as F-1 students or B-1/B-2 visitors or J-1/J-2 exchange visitors, an H-1B worker is legally permitted to have both temporary and permanent intentions at the same time (“dual intent”).

How much administrative work by the employer is required?

The employer must review and sign several governments forms, and maintain a public access file containing basic information about the job, wages and benefits. It is generally most efficient for an employer to designate an administrative staff person who will become the immigration coordinator for the employer. Although an initial H-1B case may take three or four hours of the employer’s administrative time, subsequent H-1B’s may require about half that time.

What government agencies are involved?

The U.S. Department of Labor and U.S. Citizenship and Immigration Services are the primary agencies responsible for administering the H-1B program. Depending on the location of the employee and the job site, different government offices will be responsible for the case. Filing locations are dependent upon the geographic location of the employment and whether the employer is subject to the H-1B cap. USCIS has changed the filing locations multiple times in order to achieve more efficient processing. If the candidate is outside the United States, the U.S. Department of State, and law enforcement agencies may be involved in the process.

What is my role in the H-1B process?

The foreign employee or candidate must provide accurate information and documentation regarding his/her qualifications for the job and immigration status if in the U.S. If the employee is outside the U.S. or needs to travel outside the U.S., the employee will need to complete a visa application form and to prepare for the interview at an U.S. embassy or consulate abroad.

What are the chances of success in a typical H-1B case?

Well-documented H-1B petitions that meet the essential legal requirements will most likely be approved. A careful screening by the potential employer at the outset will often identify potential complications that could reduce the probability of prompt approval.

What are the fees involved in filing an H-1B case?

There are multiple fees involved in filing an H-1B petition. The total amount to be paid depends on whether the petition is a “new” petition and whether the employer is an institution of higher education or a non-profit governmental or research organization. There is a \$320.00 **application fee** that is required of all H-1B petitions. A \$500.00 **fraud prevention and detection fee** is required for an employer’s “initial” petition. “Initial” petitions include any application by an employer for an employee who currently does not hold H-1B status or for an employee who currently holds H-1B status for another employer. For employers who are not an institution of higher education or a non-profit governmental or research organization, an additional **training fee** is required. The fee is \$750 for employers with 25 or fewer full-time equivalent employees and \$1,500 for employers with 26 or more full-time equivalent employees. There is an optional premium processing fee of \$1,000 that can be paid. The **premium processing fee** guarantees an answer on the petition within 15 days of receipt at the USCIS. Finally, if the employee already in the U.S. has **dependents** who need H-4 dependent status a fee of \$300.00 is required for the I-539 form.

Who usually pays the filing fees?

Department of Labor regulations require that the employer pay the H-1B filing fees (application fee, training fee, fraud prevention and detection fee). The optional premium processing fee (paid to obtain faster processing) may in some cases be paid by the employee or a third-party.

Who usually pays the legal expenses?

As with the filing fee, a Department of Labor regulation generally requires the employer to pay. The regulation states that all costs in connection with preparation and filing of the LCA and H-1B petition are considered the employer’s business expenses and must be paid by the employer, and the employer cannot be reimbursed by the employee.

Is there a minimum salary requirement?

Yes. The employer must pay the H-1B employee the higher of the amount as much as it pays similarly employed workers or the prevailing wage as determined by the DOL in the state of intended employment. The wage cannot be less than 100% of the prevailing wage paid to similarly employed workers in the geographic area where the beneficiary will be employed. The prevailing wage can be determined through a private wage survey or through a state workforce agency.

Can my spouse and children also get visas?

Yes. H-1B workers' family members may accompany them in H-4 status. A separate application for the spouse and children may be needed if the H-1B worker is already in the U.S. If the employee is not in the U.S., the H-4 dependents must apply for a visa at U.S. embassy or consulate. H-4 status is not automatic. H-4 status is not intended for children 21 years of age or older, married children, or for extended family members such as parents or siblings of the H-1B worker.

Can I change employers?

Workers in H-1B status are only allowed to work for a petitioning employer. There is no restriction on changing employers, so long as the new employer follows proper H-1B petitioning procedures, an H-1B employee can change employers. Employers hiring workers already in H-1B status under certain circumstances may be allowed to commence the employment upon filing their H-1B petition, rather than waiting for approval.

Can the employer promote, transfer, or otherwise change the terms of my employment stated in the H-1B petition?

Material changes in the terms of employment may be considered a status violation. Material changes will require preparation and filing of new or amended H-1B petition before the change occurs.

4.3 Requirements for H-1B Status

In order to obtain an H-1B visa, the H-1B employer must be able to establish the following:

1. **Position Specifications.** The intended U.S. position must meet the requirements of a "specialty occupation".

"Specialty occupation" is defined as an occupation which: "requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education,

business specialties, accounting, law, theology and the arts, and which requires the attainment of a Bachelor's Degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States”.

Therefore, the U.S. position must satisfy one of the following criteria:

- a) A baccalaureate degree or higher must be the minimum entry requirement for the position;
 - b) The degree requirement must be common among organizations in the industry or, alternatively, the particular position must be so complex or unique that it can only be performed by a person with a degree;
 - c) The employer must normally require a degree or its equivalent to assume the position; or
 - d) The particular duties of the position must be so specialized and complex that the knowledge necessary to execute the duties is normally associated with the attainment of a baccalaureate degree or higher.
2. **Qualifications of H-1B Non-immigrants.** The H-1B non-immigrant must be able to demonstrate his/her qualifications for the position offered through documentation of one of the following:
- a) A U.S. baccalaureate degree or higher which is specifically related to and required by the specialty occupation;
 - b) A foreign degree which has been evaluated by an accredited firm or organization to be equivalent to a U.S. baccalaureate degree which is specifically related to and required by the specialty occupation;
 - c) An unrestricted state license, registration or certification, authorizing the H-1B non-immigrant to practice the specialty occupation in the state of intended employment; such certifications would include:
 - A license to practice medicine in the state (if a physician).
 - If not a graduate of a U.S. medical school evidence that the beneficiary has passed the Federal Licensing Examination (FLEX) or the U.S. Medical Licensing Examination (USMLE) Parts I, II, or III or the National Boards of Medical Examiners Certifying Examinations, Parts I, II, and III. The physician must also show competency in oral and written English. Such proof should be passage of the English language proficiency test given by the Educational Commission for foreign medical graduates.
 - Evidence that the beneficiary has certification from the commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent certifying agency if being hired as a Nurse, Physical Therapist, Medical

Technologist, Medical Technician, Speech Language, Pathologist, Audiologist or a Physician Assistant. English proficiency as demonstrated by a TOEFL, TWE, TSE, IELTS or TOEIC test is also required.

- d) Education, specialized training and/or progressively responsible employment experience which the Department of Homeland Security determines is equivalent to the specific degree requirement of the position. Equivalency can be demonstrated by one of the following:
- An evaluation from an official with authority to grant college-level credit for training and/or experience at an accredited college or university which has such an evaluation program.
 - The results of a recognized college-level equivalency examination such as CLEP (College Level Examination Program) or PONSI (Program on Non-Collegiate Sponsored Instruction), which grants college-level credit.
 - An educational credential evaluation by an accredited service.
 - Certification or registration from a nationally recognized professional society or association in the specialty that normally grants such certification to foreign nationals who have obtained a certain level of expertise.
 - A determination by the DHS that the H-1B non-immigrant has achieved the equivalency of a U.S. baccalaureate degree in the specialty by demonstrating three years of progressive specialized training and/or work experience for every year of missing college education. The training and/or work experience must include theoretical and practical application of specialized knowledge; it must be gained while working with colleagues who have a degree or degree of equivalency in the specialty; and the foreign national must demonstrate recognition of expertise by at least two recognized authorities in the specialty; membership in a recognized U.S. or foreign association, or society in the specialty; published material by or about the H-1B non-immigrant in a professional journal, publication, book or newspaper; licensure or registration to practice the profession in a foreign country; or achievements which are considered as significant by a recognized authority in the specialty.
3. **Labor Condition Application.** The employer must file a LCA with the DOL prior to the submission of an H-1B petition to the DHS. The H-1B employee should receive a copy of the LCA.

The Labor Condition Application Process involves the following:

- a) A completed and dated LCA must be submitted on the Form ETA 9035 to the ETA Foreign Labor Certification Center. This can be done via the internet at <http://www.lca.doleta.gov>.
- b) The LCA must contain the following information:
- 1) The three-digit Occupational Group Code for the position based upon a DOL List of selected codes extracted from the Dictionary of Occupational Titles;
 - 2) The H-1B employer's title for the position;
 - 3) The number of H-1B non-immigrants sought;
 - 4) The gross wage which each H-1B non-immigrant will be paid;
 - 5) The starting and ending dates of the H-1B non-immigrant's employment (not to exceed three years); and
 - 6) The place(s) of intended employment.
- c) The LCA must further include the following:
- 1) Whether the company is an H-1B dependent or non-dependent employer. An H-1B **dependent** employer will be required to make additional attestations and thus will assume additional obligations and liabilities (as explained later in these materials).
 - 2) An H-1B **dependent** employer is defined as:
 - An employer with 25 or fewer full time equivalent employees in the United States and 8 or more H-1B non-immigrants; or
 - An employer with 26 to 50 full time equivalent employees in the United States and 13 or more H-1B non-immigrants; or
 - An employer with 51 or more full time equivalent employees in the United States and 15% or more of its employees are H-1B non-immigrants.
 - 3) For purposes of determining whether an employer is H-1B **dependent**, any group which is treated as a single employer under Section 414(b), (c), (m), or (o) of the Internal Revenue Code is considered a single employer.
 - 4) **Exempt** H-1B Non-immigrants (as explained later in the materials) will be counted in determining whether an employer is an H-1B **dependent** employer.

- 5) **Labor Conditions Statements.** The H-1B **dependent** or **non-dependent** employer must attest to certain statements, as applicable, on the LCA and retain certain documentation in support of these statements.

Wages

An H-1B employer must attest that, for the entire period of employment, the wage paid to the H-1B non-immigrant will be **the greater of:**

- 1) The actual wage rate paid to workers at the place of employment with similar experience and qualifications in the occupational classification in question. Factors including education, work experience, job responsibility and function, specialized knowledge and other legitimate business factors may be taken under consideration or;
- 2) The prevailing wage level for the occupational classification in the area of intended employment.
- 3) The prevailing wage must be based on the best information available at the time the application is filed. The following sources may be used to obtain the prevailing wage:
 - a) If the position is in an occupation subject to a wage determination under the Davis-Bacon Act or the McNamara-O'Hara Service Contract Act, the wage will be at the rate required under the statutory determination;
 - b) If the position is covered by a union contract, the wage shall be the contract wage; and
 - c) If the position is not covered under (a) or (b) above, the prevailing wage will be the average rate of wages paid to workers similarly employed in the area of intended employment. The priority of sources for determining the most accurate and reliable prevailing wage information, according to the DOL, are as follows:
 - A determination by the State Employment Security Agency ("SESA") based on the requirements of the position.
 - A wage survey published by an independent authoritative source for the occupation in the geographical area of employment which was published within a 24 month period preceding the filing of the LCA.
 - Any other legitimate source of wage information.
 - The employer must pay at least 100% of the prevailing wage as determined from one of the above sources.

- Please note that the prevailing wage does not include benefits such as the value of insurance, housing or transportation. A bonus amount can be included in “wages” only if it is guaranteed.
- A wage determination by the SESA is typically valid for LCAs filed within 90 days of the determination.

Working Conditions

An H-1B employer must attest that the employment of H-1B non-immigrants will not adversely affect the working conditions of “similarly employed” workers in the geographical area of employment. Working conditions commonly refer to hours of employment, shifts, vacation periods and fringe benefits.

Similarly employed is defined as ‘having substantially comparable jobs in the occupational classification at the work site and in the area of employment.’ If the H-1B employer does not have any other workers at the work site who meet this definition, similarly employed should be construed as having jobs requiring a substantially similar level or skills at the work site or in the employment area or having substantially comparable jobs outside the geographical area.

No Strike or Lockout

An H-1B employer must attest that in the H-1B non-immigrant’s occupational classification, there is no strike, lockout or work stoppage at the place of employment when the application is submitted to the DOL. If such a strike, lockout or work stoppage occurs, the employer must inform the DOL within three days of the occurrence.

Notice

The H-1B employer must attest that notice of the filing of the LCA has been provided to the collective bargaining representative of the H-1B employer’s employees in the occupational classification or, if there is no such bargaining representative, the H-1B employer must post a notice of filing in at least two conspicuous locations at the intended work site or post the information contained in the notice electronically to all workers in the H-1B non-immigrant’s occupational classification.

The notice shall indicate that H-1B non-immigrants are sought; the number of H-1B workers the employer is seeking; the occupational classification; the wage offered; the period of employment; and the location(s) where the H-1B non-immigrant will be employed.

Where there is no collective bargaining representative, the notice shall also state that the LCA is available for public inspection. The notice must contain the following statement:

“Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor.”

Where there is no collective bargaining representative, the notices shall be posted either physically or electronically on or before the LCA is filed. If the information in the notice is posted electronically, the electronic notification must be sent to all employees in the occupational classification in which the H-1B non-immigrants are sought. If the notices are physically posted they shall remain posted for a total of ten (10) business days. The DOL suggests posting the notices in the immediate proximity of wage and hour or occupational safety and health notices.

Displacement of U.S. Workers

An H-1B **dependent** employer and/or **willful violator** (employer found to have committed a willful violation or a misrepresentation of a material fact during the five year period preceding date of filing LCA after October 20, 1998) is required to attest that it has not “displaced” and will not “displace” any U.S. worker employed by it within the period 90 days before and 90 days after the filing of a visa petition for a **non-exempt** H-1B non-immigrant based on the LCA.

“Displace” is defined as the “laying off” of a U.S. worker from a job that is “essentially equivalent” of the job for which the H-1B non-immigrant is sought.

“Laying Off” is defined as causing a U.S. worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in the attestation).

It does not include any situation in which the U.S. worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or in the case of a placement of a worker with another employer) at equivalent or higher level.

An H-1B **dependent** employer is not required to make the Recruitment Attestation if the H-1B non-immigrant would otherwise qualify under criteria for the EB-1 extraordinary ability immigrant, EB-1 outstanding professor or researcher immigrant, or EB-1 multinational manager or executive immigrant.

Benefits

H-1B Employers must offer H-1B non-immigrants benefits and eligibility for benefits (including participation in health, life, disability, and other insurance plans, retirement and savings plans, bonuses and stock options) on the same basis as are offered to U.S. workers.

4. Public Access File Requirements.

The H-1B employer is required to assemble and retain on file certain documentation in support of the labor condition application. This file is commonly referred to as the Public Access File. This file must be available for public examination within one (1) working day after the date on which the LCA is filed with the DOL at the location stated on the LCA. The file should include:

- a) A complete copy of Form ETA-9035.
- b) Documentation which provides the wage rate that will be paid to the H-1B Non-immigrant. This may include a copy of the offer letter to the H-1B non-immigrant or a summary of the terms of the at-will employment.
- c) A copy of the documentation which was used to establish the prevailing wage. This documentation should include either a copy of the prevailing wage as determined by the SESA, a copy of the wage survey by an independent authoritative source, or a copy of the other legitimate source of wage information, such as a collective bargaining agreement.
- d) An explanation of the system that was used to set the actual wage. The DOL suggests a memorandum to the file summarizing the system or a copy of the employer's pay scale.
- e) Documentation to satisfy the employee notification requirement. This should include a copy of the dated notice and the name and address of the bargaining representative to whom the notice was provided. Alternatively, if there is no collective bargaining representative, the employer must retain a copy of the posted notices with the dates and locations of posting. If the notice is posted electronically, the employer should keep a printed copy of the notice and printed confirmation about when the notice was sent and to whom it was sent.
- f) A detailed statement about the benefits being offered to the H-1B non-immigrant and those already offered to U.S. workers. The benefits which should be included in the statement are: health, life, disability and other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance).

- g) A statement about the number of full time equivalent employees, the number of H-1B employees, and whether the employer is H-1B dependent or non-dependent.
- h) A statement about whether the H-1B non-immigrant qualifies as an exempt H-1B employee and if the H-1B employee is exempt, how he qualifies for the exemption.
- i) For H-1B dependent employers only who are petitioning for non-exempt H-1B non-immigrants – Statement confirming that the employer has not or will not displace a U.S. worker 90 days before or 90 days after the filing of the visa petition on behalf of a non-exempt H-1B non-immigrant.

If the employer has displaced a U.S. worker within the period of 90 days before and 90 days after filing the visa petition, detailed documentation of one or more of the following:

- The U.S. worker was discharged for inadequate performance, violation of workplace rules, cause, voluntary departure or retirement, or expiration of a grant or contract (other than a temporary employment contract entered into in order to evade the attestation); or
 - The U.S. worker was offered similar employment with the same employer or contractor at equivalent or higher compensation and benefits and he/she either accepted or rejected this offer.
 - The position for which the non-exempt H-1B non-immigrant is being sought is not essentially the equivalent of the position from which the U.S. worker was displaced because the responsibilities are not essentially the same or the U.S. worker did not have the substantially equivalent qualifications or experience; or the position is not located in the same area of intended employment.
- j) For H-1B dependent employers who will be placing the non-exempt H-1B non-immigrant with another employer (regardless of whether the other employer is H-1B dependent or non-dependent) – Statement about the date and the name and title of whom the H-1B dependent employer spoke with at the other employer’s office to confirm that that other employer has not or will not displace the U.S. worker within the 90 days period before and 90 days after placing the non-exempt H-1B non-immigrant with the other employer. Additionally, the statement should also confirm that the H-1B dependent employer has no independent knowledge of the fact that the other employer has or will displace U.S workers during the requisite period.
 - k) For H-1B dependent employers who are petitioning for non-exempt H-1B non-immigrants, a statement about its recruitment efforts for U.S. workers. The statement should include the following:

- A detailed description of the H-1B dependent employer's good faith steps to recruit U.S. workers in the United States for the available position, including using procedures that meet industry-wide standards and offering compensation that is at least as great as the prevailing wage for the offered position.
 - Documentation about the industry – wide standards for recruiting for the offered position.
 - Documentation about the prevailing wage for the offered position.
 - Information about whether any U.S. workers applied for the offered position.
 - If U.S. workers applied for the position – a detailed statement with supporting documentation (e.g. the resumes of the U.S. worker and the non-exempt H-1B non-immigrant).
- 1) In addition to the documents which the H-1B employer is required to maintain in a Public Access File, the H-1B employer should develop and maintain additional documentation supporting the Labor Condition Application. Although these documents do not have to be included in the Public Access File, they should be available for review if requested by the DOL at the location stated on the LCA. These documents are as follows:
- If the H-1B employer employs other U.S. workers in the same occupational classification as the H-1B non-immigrant, the H-1B employer should retain payroll records which confirm the actual wage for the occupational classification. Documentation should include information about the H-1B employer's salary rate for all other employees with similar experience and qualifications for the offered position, beginning with the date the LCA was submitted and continuing throughout the H-1B employee's period of employment. Payroll records for each employee should include: (1) employee's full name; (2) employee's home address; (3) employee's occupation; (4) employee's rate of pay; (5) hours worked each day and each week by the employee if paid on other than a salary basis, or the prevailing or actual wage is expressed as an hourly wage; (6) total additions to or deductions from each pay period by the employer; and (7) total wages paid each pay period, date of pay and pay period covered by the payment to the employee.
 - The H-1B employer should be able to document that the employment of the H-1B non-immigrant will not adversely affect the working conditions of workers similarly employed in the area of the intended employment. Documentation should include information about the working conditions at the work site, such as hours, shifts, vacation periods and fringe benefit packages, which pre-existed the employment of the H-1B non-immigrant.
 - If a strike, lockout, or a work stoppage in the course of a labor dispute occurs at the H-1B's non-immigrant employment site, the employer will have to document that it informed the DOL of this event.

- Documentation about the benefits offered to the H-1B non-immigrant and U.S. workers. Benefits include: health, life, disability, other insurance plans; the opportunity to participate in retirement and savings plans; and cash bonuses and noncash compensation, such as stock options (whether or not based on performance.)

5. Record Keeping Requirements

- a) Documentation in the Public Access File should be maintained by the H-1B employer for one year after the period of employment stated on the LCA. Alternatively, the documentation should be maintained for one year after the date the LCA was withdrawn.
- b) If a complaint is filed, the documentation should be retained until the complaint is resolved.
- c) Payroll records for the H-1B non-immigrant and other employees in the same occupational classification should be retained for a period of three years from the expiration or withdrawal of the LCA. If a timely complaint is filed, all payroll records should be retained until the complaint is resolved.

6. Enforcement of LCA provisions

The DOL may investigate an employer without a complaint if it receives “specific and credible information” about a potential violation of the LCA from a source likely to have knowledge of the H-1B employer’s practices, employment conditions or LCA compliance. The specific and credible information must provide “reasonable cause” to believe that a violation of the LCA requirements has been committed.

Any individual who provides such information must complete a form which will be developed by DOL to ensure compliance with the False Statements Act.

The H-1B employer may not intimidate, threaten, restrain, coerce, blacklist, discharge, or otherwise discriminate against an employee (including a former employee or an applicant for employment) because such individual has disclosed information to the H-1B employer or anyone else regarding a potential violation, or for cooperating in an investigation or proceeding.

4.4 Period of Authorized Stay in the United States

An H-1B petition can be initially approved for a maximum of three years but may not exceed the period of validity stated on the LCA.

An extension of stay in H-1B classification can be authorized for a maximum of three years; however, the total period of continuous stay in the U.S. may not exceed six years

in H-1B classification, unless one of the limited exceptions as noted in section 5.6 are met.

Periods of time spent in the United States in the L-1 (intra company transferee) or classification is counted towards determining the limitation of stay. However time spent in the dependent H-4 classifications is not counted toward the H-1B limitation of stay.

Once the limitation of stay is reached, an H-1B non-immigrant for whom the employment-based permanent residency process has not been initialized before the end of his or her fifth year of H-1B eligibility may not be granted an extension, change of status or readmission to the United States under H or L classification without residing and being physically present outside of the United States for at least one year.

In some cases, it is possible to get permission to exceed the six-year limit on H-1B status. For example, if the green card process is initiated before the end of the employee's fifth year of H-1B status, extensions of H-1B status in one year increments are available until the green card application is decided. Those who are the beneficiaries of an approved I-140 are eligible for additional H-1B time in three year increments if the priority date is not current.

4.5 Numerical Limitation on H-1B Non-immigrants (H-1B Cap)

The government's fiscal year is from October 1 to September 30. Sixty-five thousand (65,000) H-1B petitions can be approved during a fiscal year. Additionally, twenty thousand (20,000) petitions can be approved for individuals who have obtained a Master's degree or higher from a U.S. institution.

Each foreign national (with the three exceptions noted below), who is approved for H-1B classification is counted in this determination. However, approvals for extensions of stay in H-1B classification, sequential employment, concurrent employment, and amended petitions are **not** counted in this determination.

H-1B employees of higher education institutions, nonprofit research organizations and government research organizations are not counted toward the quota. However, if they change employers to a nonexempt employer, they will be counted toward the quota in the year they changed employers. Furthermore, individuals counted toward the quota in the previous six years of H-1B status who have been outside the United States for one full year and are again seeking admission pursuant to H-1B classification will be counted toward the quota.

4.5.1 Who is actually subject to the cap?

Not every H-1B applicant is subject to the cap. Visas will still be available for applicants filing for amendments, extensions, and transfers unless they are transferring from an exempt employer or exempt position and were not counted towards the cap previously.

The cap also does not apply to applicants filing H-1B visas through institutions of higher education, nonprofit research organizations, and government research organizations.

Note: Physicians who received a J waiver under the Conrad State 30 Program are exempt from the cap.

4.5.2 What will happen to petitions that are filed after the cap is reached?

The CIS will return all petitions for first-time employment subject to the annual cap received after the end of business on the day the cap is reached. Returned petitions will be accompanied by the filing fee. Those cases that were filed before the announcement issued by the CIS will be reviewed. For fiscal year 2008 (beginning October 2007), the cap was reached for those not holding U.S. Masters or higher degree on April 1, 2007, the first day on which petitions were accepted for filing. The cap for the U.S. Masters category was reached approximately 3 weeks later. For fiscal year 2009, it is predicted that the cap for both categories will be reached on April 1, 2008, the date on which filings are accepted. If the demand exceeds the H-1B supply, USCIS will institute a lottery system to select petitions for processing. For example, if the number of petitions received on the first day filings can be received, exceeds the number of available H-1B visas, USCIS will return all petitions received after that date and randomly select for processing from those received on the first day of filing.

4.5.3 What will happen to the petitions that do not count against the cap?

Petitions for current H-1B workers normally do not count towards the congressionally mandated H-1B cap. The CIS will continue to process petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States.
- Change the terms of employment for current H-1B workers.
- Allow current H-1B workers to change employers (unless the beneficiary is transferring from a cap exempt employer to a cap subject employer and was never counted towards the cap. In that case the beneficiary will be subject to the cap).
- Allow current H-1B workers to work concurrently in a second H-1B position.

The CIS will also continue to process petitions for new H-1B employment filed by applicants who will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization.

4.5.4 What will happen to F and J visa holders who are beneficiaries of an H-1B petition?

In the past, the CIS had safeguards in place for those with F and J visa status. According to 8 CFR Section 214.2 (f) (5) (vi), if it can be determined that all of the H-1B visas will be used before the end of the current fiscal year, the director of the CIS can extend the

duration of status of any F-1 student if the employer has timely filed an application for change of status to H-1B. 8 CFR Section 214.2 (j) (1) (vi) has similar language regarding those in J status. However, CIS has not enacted this safeguard since the 2005 cap and has indicated it is not likely to do so in the future.

4.6 Miscellaneous Matters

Expedited Processing Fee. A \$1000 expedited processing fee is now in effect. Payment of the \$1000 processing fee will ensure a decision on an H-1B petition within 15 days (unless a Request for Evidence is issued upon initial review by CIS). The employer must pay this fee unless it can be demonstrated that the need for premium processing is not business related, but personal. The employer should have the employee sign an attestation regarding the personal nature of need for premium processing.

Extensions Beyond Six Years for H-1Bs Awaiting Green Cards. In some cases, it is possible to get permission to exceed the six-year limit on H-1B status. For example, if the green card process is initiated before the end of the employee's fifth year of H-1B status, extensions of H-1B status in one year increments are available until the green card application is decided. Those who are the beneficiaries of an approved I-140 are eligible for additional H-1B time in three year increments if the priority date is not current.

Portability of H-1B Status. Individuals who were previously provided H-1B status, who were lawfully admitted and who have not been employed without authorization in the United States, may accept new employment upon the filing by the prospective employer of an H-1B petition with the CIS. If the petition is denied, the authorization to continue the employment ceases. The H-1B employee should maintain employment with the current H-1B employer until the new employer's I-129 petition requesting portability is received by CIS.

Termination of Employment. If the H-1B non-immigrant is dismissed from employment for any cause prior to the end of his/her authorized admission, the H-1B employer is responsible for the reasonable costs of return transportation to the H-1B non-immigrants' last place of residence outside of the United States. Return transportation is not required if the H-1B non-immigrant voluntarily terminates his/her employment. The employer is not responsible for return transportation of dependents.

Admission Prior to Petition's Validity Date. H-1B non-immigrants may be admitted to the United States up to 10 days prior to the petition's validity date, and may legally remain for a 10-day period after the validity date period ends. However, the H-1B non-immigrant may work only during the validity period of the petition.

Amended Petition. An amended or new petition must be filed to reflect any material changes in the terms and conditions of employment as contained in the original petition and its supporting documentation, including the LCA. If the DOL requires the H-1B employer to file a new LCA, the H-1B employer must file an amended petition with the CIS. However, an amended petition is not required if the petitioner undergoes corporate

restructuring whereby the new corporate entity succeeds to the interests and obligations of the original petitioning employer and the terms and conditions of employment remain the same but for the identity of the petitioner. According to the DOL Interim Final Regulations, the new entity must complete additional Public Access File documentation or file a new LCA prior to employing the H-1B non-immigrant.

Foreign Residency Requirement. H-1B non-immigrants who are authorized to remain in the United States pursuant to the H-1B classification do not have to maintain a foreign residence.

Dual Intent Doctrine. Unlike non-immigrants in other non-immigrant classifications, H-1B non-immigrants are not presumed to be intending immigrants. Therefore, they cannot be denied admission to the United States or be denied an extension of H-1B classification because they are in the process of applying for U.S. lawful permanent resident status.

Tax Implications. H-1B status holders are generally considered **nonresidents** for tax purposes unless they meet the Substantial Presence Test. They should be treated as residents for tax purposes, however, if they are expected to be in the U.S. for at least 183 days in the current tax year, or are otherwise expected to pass the Substantial Presence Test.

Designation of Employers. There are two classifications of H-1B employers, dependent and non-dependent. This is determined via a ratio of the number of H-1B employees against the total number of employees.

Designation of Employees. The regulations further differentiate the type of employees into exempt and non-exempt. A H-1B non-immigrant is exempt if he/she possesses a Master's degree (or equivalent) OR his/her annual salary is at least \$60,000.

Employer Attestations. H-1B employers who are classified as dependent and are employing a non-exempt H-1B employee, or have previously been found to be willful violators, are required to make additional attestations on the LCA regarding non-displacement of U.S. workers and recruitment efforts, as well as maintain documentation supporting such attestations.

Actual Wage Determination. An employer must maintain documentation as to how it arrived at the actual wage for the position and it must be kept in the Public Access File in support of the LCA attestation. This determination of the actual wage is not an "objective test", but must be based on "legitimate business factors".

Unpaid Benching. Employers are required to pay H-1B non-immigrants as stated on the LCA, even if the H-1B non-immigrant is not performing work (i.e. benched) unless the non-immigrant is not working for personal reasons unrelated to the job such as caring for an ill relative, maternity leave etc.

Attorney's Fees. The regulations further provide that certain H-1B non-immigrants cannot pay attorney fees. Specifically, H-1B non-immigrants cannot pay attorney fees if said fees (and related costs), when deducted from the H-1B non-immigrants salary, would make the wage less than the higher of the actual or prevailing wage for the position.

No Penalty for Ceasing Employment Early. The regulations prohibit employers from penalizing H-1B non-immigrants who cease employment prior to a date agreed by the H-1B non-immigrant and employer.

Notice Requirement. The regulations require that employers, when no collective bargaining representative is available, provide notice of the filing of the LCA by posting, for 10 business days, a hard copy notice in at least two conspicuous locations at each place the H-1B non-immigrant will be employed OR by electronic notice to employees in the H-1B non-immigrant's proposed occupation classification.

Penalties. The regulations, in addition to current penalties of \$1,000/one-year debarment for certain "basic" violations and \$5,000/two-year debarment for certain "willful" violations, impose a \$35,000/three year debarment penalty for employers (regardless of whether dependent or non-dependent employers) who displace a U.S. worker employed by the employer in the period beginning 90 days before and ending 90 days after the filing of the H-1B petition in conjunction with a willful violation of a certain provision of the regulations or a willful misrepresentation of a material fact on the LCA.

4.7 H-1B Specialty Worker Application Checklist

The Employer Must Supply:

A complete H-1B specialty worker petition will include the following:

1. Completed Form I-129, I-129H Supplement and I-129W.
2. A letter signed by the hiring authority stating:
 - a) The location of employment, the dates of the employment requested for the H-1B appointment, salary and brief description of job duties and minimum academic degree requirement.
 - b) An explanation of why this candidate was selected for the job. The explanation should include items such as education, experience, special knowledge, background, etc. which justify hiring him/her over other candidates.
 - c) That the employer agrees to comply with all terms of the LCA until the end date including agreeing to furnish return trip airfare home if employee's employment is terminated before the date on the I-129 application.
3. Documentation of how the prevailing wage was arrived at.

4. A certified Labor Condition Application (LCA) from the Department of Labor.
5. A check made out to U.S. Citizenship and Immigration Services (USCIS) for \$320.00. An additional fee of \$500 (separate check) must be submitted for an “initial” petition. For employers who are not an institution of higher education or non-profit governmental or research organization, a training fee is required. The check should be for \$750 for employers with 25 or fewer full-time equivalent employees and \$1500 for employer with 26 or more full-time equivalent employees. The employer must pay these fees.
6. Form I-907 Request for Premium Processing (if being requested) and an additional check for \$1,000.

The beneficiary must supply:

7. A copy of the required degree/diploma. If the degree is NOT from an American university (except U.K. and Canada, not including Quebec), an evaluation of equivalent U.S. degree must be submitted. An acceptable evaluation should:
 - a) Consider formal education only, not practical training experience;
 - b) State if the collegiate training was post secondary education, i.e., did the applicant complete the United States equivalent of high school before entering college;
 - c) Provide a detailed explanation of the materials evaluated, rather than a simple conclusive statement;
 - d) Briefly state the qualifications and experience of the evaluator providing the opinion.
8. Any documents not in English must be translated and accompanied by a translator’s statement as follows: I, _____, hereby certify that I am competent to translate from the _____ language into English and that the attached is an accurate translation of the original document.
 Name: _____
 Title: _____
 Address: _____
9. Personal information such as:
 - a) Curriculum vitae;
 - b) Full name, date of birth, address in home country, local U.S. address, country of birth, country of citizenship, and Social Security # ;
 - c) If overseas, expected port of entry, and city overseas where visa will be obtained.

If currently in the U.S.:

- d) Copies of approval notices for all stays in H-1B status in the U.S. for past six years;

- e) Copies of all relevant immigration documents including: all I-20s (if F-1) or DS-2019's (if J-1), both sides of I-94 card, other documents such as I-797 approval notices (if H-1B, TN, O, etc.) and work permits (if F-1, J-2 or L-2);
 - f) Copy of a valid passport;
 - g) If on J-1 status, copy of the waiver of the two-year home residency requirement (or proof he/she is not subject to the requirement); and
 - h) If currently employed as an H-1B, proof that the employment is still in effect at the time of application for the new employers H-1B petition. Such proof may include a current paycheck receipt or a letter from the employer.
10. If the beneficiary's spouse or children are currently in the U.S. and would like H-4 dependent status, the spouse/children must complete form I-539 for change/extension of status, furnish an additional check for \$300.00 to the DHS and submit copies of all I-94 cards (front and back), passports, visas, approval notices, and work permits (if applicable). An I-539 form can be obtained from the USCIS webpage at <http://uscis.gov>.

SECTION FIVE: J-1 EXCHANGE VISITORS

- 5.1 Introduction
- 5.2 General Provisions
- 5.3 J-2 Dependents
- 5.4 Two Year Home Country Physical Presence Requirement

5.1 Introduction

J-1 status holders are referred to as exchange visitors. Institutions must be designated as an exchange visitor program in order to issue a DS-2019 for J-1 status. J-1 exchange visitors are limited to work on the premises of the institution that issued the DS-2019. Under certain circumstances some exchange visitors may be authorized to do work, give lectures, or engage in other activities off the premises of the sponsor. Such employment must be specifically authorized in writing by the sponsor. J-1 exchange visitors can fall into one of the following categories: Professor; Research Scholar; Short-Term Scholar; Specialist; Student (degree and non-degree); AuPair; Camp Counselor; Alien Physician; Trainee; Government Visitors; and Summer Work. Each category has its own time limitations.

5.2 General Provisions

J-1 Exchange Visitors may receive compensation from the sponsor (preparer) of the DS-2019 for employment when such activities are part of the established program. Any other employment would be considered unauthorized employment. Occasional paid lectures or other employment can be obtained but must be specifically authorized in writing by the program sponsor. When exchange visitors are admitted to the United States, they are issued a Form I-94 (Arrival/Departure Record) marked "D/S" for "duration of status." Form DS-2019 is also annotated "D/S." This means they may remain in the United

States as long as they maintain J-1 status until 30 days after the termination date written on the DS-2019. The D/S notation means that USCIS considers them to be in status as long as the DS-2019 is valid and they engage only in activities permitted by the DS-2019. Exchange visitors may file for an extension of stay if it is necessary to accomplish the program objectives and time remains in the category.

5.3 J-2 Dependents

Spouses and children of J-1 exchange visitors are classified with J-2 status. They are eligible to apply for an Employment Authorization Document. Once granted, they are employable. Their EAD will have an expiration date. J-2 EAD's are issued for one year intervals, or until such time that the J-1's DS-2019 expires, whichever is sooner. They are not permitted to continue employment unless the EAD is renewed in a timely manner.

5.4 Two-Year Home Country Physical Presence Requirement

The two-year home country physical presence requirement is one of the most important special characteristics of exchange visitor status and should be thoroughly understood by the employer. An exchange visitor subject to the two year requirement is not eligible to obtain permanent residency, H temporary worker or trainee, or L intra-company transferee status in the United States until they have resided and been physically present in their country of nationality or last legal permanent residence for a total of at least two years following departure from the United States. They are also not permitted to change to another non-immigrant status in the United States.

These restrictions apply when:

- Their participation in the program for which they came to the United States was financed in whole or part, directly or indirectly, by an agency of the U.S. government or by the government of their home country;
- When, at the time of admission or acquisition of exchange visitor status they were a national or resident of a country which the U.S. Department of State, designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which they are engaged; or
- They came to the United States or acquired exchange visitor status in order to receive graduate medical education or training.

5.4.1 Government Financing

“Financed directly” means financed in whole or part by the United States Government or the home government with funds contributed directly to the visitor in connection with an exchange visitor program. “Financed indirectly” means 1) financed by an international organization with funds contributed by either the United States or the home government for use in financing international educational and cultural exchange, or 2) financed by an organization or institution with funds made available by either the United States or the

home government for the purpose of furthering international educational and cultural exchange.

5.4.2 Exchange Visitor Skills List

The determination as to whether an exchange visitor is subject to the two-year home country physical presence requirement, depending on the need for specialized knowledge or skills in the home country, is made by reference to the Exchange Visitor Skills List. This is an official list of fields of specialized knowledge and skills needed in each country determined by each country's corresponding government. An exchange visitor is subject to the two-year home country physical presence requirement on this basis only if participation in an exchange program began after their field of study appeared on the skills list.

5.4.3 Waiver of the Two-Year Home Country Requirement

Exchange visitors who are subject to, but do not wish to comply with, the two-year home country physical presence requirement, may apply for a waiver of that requirement under any one of the applicable grounds provided by United States immigration law. They are as follows:

(1) A “No Objection” statement from the home government

If an exchange visitor elects to apply for a waiver on this basis, the statement of “No Objection” must be sent directly from his or her embassy in Washington, DC to Visa Services in the United States Department of State. The Embassy must state that the visitor's government has no objection to his or her a) not returning to the home country to satisfy the two-year foreign residence requirement and b) remaining in the U.S. if he or she chooses. When the “No Objection” statement originates from the exchange visitor's government in the home country, it must be forwarded by that government directly to the American Consul at the U.S. Embassy or Consulate, which in turn will transmit the statement to Visa Services. The “No Objection” statement should be sent to the Department of State with a DS-3035 Data Sheet and TWO self-addressed stamped, legal-size envelopes (S.A.S.E.) and a check or money order for \$215.00 U.S. dollars per application, payable to the U.S. Department of State at:

Postal Service:

U.S. Department of State/Waiver Review Division
Division
PO Box 952137
St Louis, MO 63195-2137

Courier Service:

U.S. Department of State/Waiver Review
Division
Box 952137
1005 Convention Plaza
St. Louis, MO 63101-1200

Exchange visitors must write their full name, date of birth and Social Security Number, if any on the check or money order.

Once the Waiver Review Division has received the Data Sheet, they will use the self-addressed, stamped, legal-sized envelope to send a case number and instruction sheet on how to proceed with the application under the basis designated on the Data Sheet. This information will include a list of documents that must be submitted to complete the Waiver Review Application. After the exchange visitor has received a case number, he or she must write the full case number on any documentation they submit as well as on the outside envelope of all future correspondence with this office. If they do not write the case number on all correspondence and on the outside of the envelope, the documents submitted will be returned.

It is the exchange visitor's responsibility to submit all requested documents and required letters sent on their behalf. Once the DOS has sent the checklist of items necessary to complete the review of the application, the Waiver Review Office will NOT follow up on documents that have not been received.

An exchange visitor may use the J Visa Waiver On-line Program to prepare the DS-3035 or they can download the application and fill it out by hand. An exchange visitor may check on the status of the application online. They must have their full case number in order to obtain the status of their case. All application forms and the status check can be obtained online at: <https://j1visawaiverrecommendation.state.gov/>. The DOS recommends that exchange visitors submit all the requested documents at the same time. Some letters (such as a "No Objection" statement from your government) must be submitted directly to the Waiver Review Division by the Embassy. In that case, the applicant, must request that the Embassy write the full case number on the "No Objection" statement and also on the outside of the envelope to be sent to the Waiver Review Division. If the third party agrees, the exchange visitor may have all their documents forwarded to the Waiver Review Division through the third party. Please note, however, that ALL documents sent to the Waiver Review Division must have the file number clearly visible on it, and on the outside of the envelope or they will be returned.

At the conclusion of the review process, the Waiver Review Division will forward its recommendation directly to U.S. Citizenship and Immigration Services and the exchange visitor will receive a copy of that recommendation at the address listed on the data sheet. If the application is denied, the exchange visitor will be notified directly.

(2) Request by an interested (U.S.) Government agency, or IGA

If an exchange visitor is working on a project for or of interest to a United States Government agency, that agency may determine that the visitor's continued stay in the United States is vital to one of its programs. The head of the agency, or duly appointed designee, may request a waiver on behalf of the exchange visitor stating that his or her continued stay in the United States is in the public interest. The application must be sent directly to Visa Services (see address above).

If Visa Services agrees with the agency that a waiver should be granted, it will forward such recommendation to USCIS.

(3) Persecution

If the exchange visitor believes that he or she will be persecuted upon return to the home country due to race, religion, or political opinion, he or she can apply for a waiver by filing a USCIS Form I-612 with the USCIS office having jurisdiction over his or her current place of residence in the United States. If USCIS makes a finding of probable persecution, it will forward the application to Visa Services for its recommendation. Visa Services will then forward the application to the State Department's Office of Asylum Affairs for its opinion with respect to the claim of persecution. If it is determined that it is likely that the exchange visitor will be persecuted upon return to the home country, Visa Services will forward a favorable recommendation to USCIS which will grant or deny the waiver.

(4) Exceptional hardship to a United States citizen (or permanent resident) spouse or child of an exchange visitor

If the exchange visitor can demonstrate that his or her departure from the United States would cause extreme hardship to his or her United States citizen or lawful permanent resident spouse or child, he or she may apply for a waiver by filing an USCIS Form I-612 with the USCIS office having jurisdiction over his or her current place or residence in the United States. If USCIS makes a finding of exceptional hardship, it will forward the application to Visa Services for a recommendation. Please note that mere separation from family is not considered to be sufficient to establish exceptional hardship. If Visa Services determines that the hardship outweighs the program, policy and foreign relations considerations, it will forward a favorable recommendation to USCIS, which will grant or deny the waiver.

USCIS normally follows Visa Services' recommendations to grant waivers on all of the above grounds although it has the authority to deny waivers. If the recommendation from Visa Services is negative, USCIS is precluded from granting the waiver.

(5) Request by a designated State Department of Health, or its equivalent

Note: The law permits only medical doctors to apply for a waiver on this basis.

Pursuant to the requirements of Public Law 103-416, signed by President Clinton on October 25, 1994, if the foreign medical graduate a) demonstrates a bona fide offer of full-time employment at a health care facility in a designated health care professional shortage area, b) agrees to begin employment at the facility within 90 days of receiving a waiver and c) signs a contract to continue to work at the health care facility for a total of not less than three years, the designated State Department of Health, or its equivalent, may request a waiver on behalf of the exchange visitor. The request letter must state that his or her continued stay in the United States is in the public interest. Copies of all DS-2019 forms issued to the exchange visitor should be included with the waiver application. The application must be sent directly to Visa Services (see address above).

Up to 30 such applications may be granted for each state each federal fiscal year. If Visa Services agrees with the State Department of Health, or its equivalent, that a waiver should be granted, it will forward a recommendation to USCIS.

Further instruction on obtaining a waiver of the two-year home physical presence requirement can be found in the Appendices.

SECTION SIX: TN Status for Canadians

- 6.1 Introduction
- 6.2 Requirements for TN Status
- 6.3 Advantage for TN Status
- 6.4 Documents necessary to prove applicant's qualifications

6.1 Introduction

Under NAFTA (North American Free Trade Agreement) Canadian professionals may apply to enter the U.S. under the TN visa classification.

Main procedural step:	Apply at the U.S./Canadian border
Initial duration of status:	One year maximum
Total time-limit cap on category:	No time cap
Processing time:	Instant approval
Major advantage:	Quick
Major disadvantages:	Lasts only one year; frequent renewals required; not all professions qualify

6.2 Requirements for TN Status:

- Proof of Canadian citizenship (Canadian Landed Immigrants and non-Canadian citizens must apply for H-1B status).
- Evidence that the intended U.S. employment and the applicant qualify under Schedule 2 of NAFTA (A list of professionals who qualify under Chapter 15, Schedule 2, of NAFTA is provided in the following pages).
- Applicants must intend to engage in employment at a professional level and the employment must be prearranged by a U.S. company or institution.
- A letter from the U.S. employer detailing the nature of the employment. TN status is granted for only one employer at a time for a specific type of work. For multiple employers, multiple TN applications must be filed (if applying at the border).
- Form I-129 approved by the USCIS if applying to the USCIS Service Center instead of the border.
- Self-employed professionals are precluded from obtaining TN status.

6.3 Advantages of TN Status:

- Granted in one year increments, with unlimited renewals.
- No forms are required. TN status can be obtained in person at the U.S. border.
- TN status is available to some people who may not qualify for H-1B status.

6.4 Documents Necessary to Prove Nature Employment:

- A letter from U.S. employer detailing nature of employment in U.S.
- The employment must be temporary. A letter from U.S. employer stating that employment is temporary is needed. A person on TN status can later apply for permanent resident status based on the same U.S. employment. However, at the time of the TN application, the applicant cannot intend to remain in the United States permanently.
- There must be no strike or lockout at proposed worksite. If there is, the DHS may deny the entry or employment.

6.5 Documents Necessary to Prove Applicant’s Qualifications:

- Originals or certified copies of school records, diplomas, licenses, degrees, certificates or membership in professional organizations, or transcripts showing an appropriate degree (bachelor’s degree or higher) from a recognized university or college; a statement of U.S. equivalency might be required.
- If a license is necessary in the U.S. state where employment is located (i.e., C.P.A., lawyer, professional engineer, etc.), then the applicant must provide proof of possession of a license to be able to practice in the U.S. or an explanation in the petitioner’s cover letter regarding why the beneficiary does not need to be licensed to perform services in the particular state.
- DHS will approve an unlicensed applicant who will be under the direct supervision of licensed personnel. (This occurs only in professions that customarily permit members to practice under these conditions.)

6.6 LIST OF PROFESSIONS QUALIFYING FOR TN STATUS

PROFESSION	MINIMUM EDUCATIONAL REQUIREMENT AND ALTERNATIVE CREDENTIALS
Accountant	Baccalaureate or Licenciatura degree; or C.P.A., C.A., C.G.A., or C.M.A.
Architect	Baccalaureate or Licenciatura degree; or state/provincial license.
Computer Systems Analyst	Baccalaureate or Licenciatura degree; or Post-Secondary Diploma or Post-Secondary Certificate and 3 years experience.
Disaster Relief Insurance	Baccalaureate or Licenciatura degree and successful completion of training in Claims Adjuster the appropriate areas of insurance adjustment pertaining to disaster relief

	claims; or 3 years experience in claims adjustment and successful completion of training in appropriate areas of insurance adjustment pertaining to disaster relief.
Economist	Baccalaureate or Licenciatura degree.
Engineer	Baccalaureate or Licenciatura degree; or state/provincial license
Forester	Baccalaureate or Licenciatura degree; or state/provincial license
Graphic Designer	Baccalaureate or Licenciatura degree; or Post-Secondary Diploma and 3 years experience
Hotel Manager	Baccalaureate or Licenciatura degree in hotel/restaurant management or Post-Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management and 3 years experience in hotel/restaurant management.
Industrial Designer	Baccalaureate or Licenciatura degree; or Post-Secondary Diploma or Post-Secondary Certificate and 3 years experience
Interior Designer	Baccalaureate or Licenciatura degree; or Post-Secondary Diploma or Post-Secondary certificate and 3 years experience
Land Surveyor	Baccalaureate or Licenciatura degree; or state/provincial license
Landscape Architect	Baccalaureate or Licenciatura degree
Lawyer	(including Notary L.L.B., J.D., L.L.L., B.C.L., or Licenciatura degree (5 years); or membership in province of Quebec; a state/provincial bar.
Librarian	M.L.S., or B.L.S. (For which another Baccalaureate or Licenciatura degree was a pre-requisite).
Management Consultant	Baccalaureate or Licenciatura degree; or equivalent professional experience as established by statement or professional credential attesting to 5 years experience as a management consultant, or 5 years experience in a field of specialty related to the consulting agreement
Mathematician (including Statistician)	Baccalaureate or Licenciatura degree.
Range Manager/Range Conservationist	Baccalaureate or Licenciatura degree
Research Assistant (working in a post-secondary educational institution)	Baccalaureate or Licenciatura degree.
Scientific Technician or	Possession of (a) theoretical knowledge of disciplines:

Technologist	agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics; and (b) the ability to solve practical problems in discipline, or the ability to apply principles of any of those disciplines to basic or applied research.
Social Worker	Baccalaureate or Licenciatura degree
Sylviculturist (including Forestry Specialist)	Baccalaureate or Licenciatura degree.
Technical Publications	Baccalaureate or Licenciatura degree; or Post-Secondary
Writer	Diploma or Post-Secondary Certificate and 3 years experience.
Urban Planner	Baccalaureate or Licenciatura degree
Vocational Counselor	Baccalaureate or Licenciatura degree
MEDICAL/ALLIED PROFESSIONALS	MINIMUM EDUCATIONAL REQUIREMENT AND ALTERNATIVE CREDENTIALS
Dentist	D.D.S., D.M.D., Doctor en Odontologia or Doctor en Cirugia Dental or state/provincial license.
Dietician	Baccalaureate or Licenciatura degree; or state/provincial license
Medical Technologist (Mexico and U.S.), Medical Laboratory Technologist (Canada)	Baccalaureate or Licenciatura degree; or Post-Secondary Diploma or Postand Secondary Certificate and 3 years experience.
Nutritionist	Baccalaureate or Licenciatura degree.
Occupational Therapist	Baccalaureate or Licenciatura degree; or state/provincial license
Pharmacist	Baccalaureate or Licenciatura degree; or state/provincial license
Physician (teaching or research only)	M.D., Doctor en Medicina; or state/provincial license
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura degree; or state/provincial license
Psychologist	State/provincial license or Licenciatura degree
Recreational Therapist	Baccalaureate or Licenciatura degree
Registered Nurse	State/provincial license or Licenciatura degree
Veterinarian	D.V.M., D.M.V., or Doctor en Veterinaria; or state/provincial license.
SCIENTIST	
Agriculturist/Agronomist	Baccalaureate or Licenciatura degree
Animal Breeder	Baccalaureate or Licenciatura degree
Animal Scientist	Baccalaureate or Licenciatura degree

Apiculturist	Baccalaureate or Licenciatura degree
Astronomer	Baccalaureate or Licenciatura degree
Biochemist	Baccalaureate or Licenciatura degree
Biologist	Baccalaureate or Licenciatura degree
Chemist	Baccalaureate or Licenciatura degree
Dairy Scientist	Baccalaureate or Licenciatura degree
Entomologist	Baccalaureate or Licenciatura degree
Geneticist	Baccalaureate or Licenciatura degree
Geochemist	Baccalaureate or Licenciatura degree
Geographer	Baccalaureate or Licenciatura degree
Geologist	Baccalaureate or Licenciatura degree.
Geophysicist (including Oceanographer in Mexico and U.S.)	Baccalaureate or Licenciatura degree.
Horticulturist	Baccalaureate or Licenciatura degree.
Meteorologist	Baccalaureate or Licenciatura degree.
Pharmacologist	Baccalaureate or Licenciatura degree.
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura degree.
Plant Breeder	Baccalaureate or Licenciatura degree.
Poultry Scientist	Baccalaureate or Licenciatura degree.
Soil Scientist	Baccalaureate or Licenciatura degree.
Zoologist	Baccalaureate or Licenciatura degree.
TEACHER	
College	Baccalaureate or Licenciatura degree.
Seminary	Baccalaureate or Licenciatura degree.
University	Baccalaureate or Licenciatura degree.