



## IMPORTANT H-1B NONIMMIGRANT VISA INFORMATION

### What are H-1Bs?

- A) **Temporary:** H-1Bs are temporary foreign professionals hired by a U.S. employer.
- B) **Highly skilled:** H-1Bs can be hired only for “specialty occupations,” those jobs requiring the equivalent of at least a bachelor’s degree in the field.
- C) **Professionals:** H-1Bs must be professionals .

### Why Do Employers hire H-1Bs?

**Need skills and Temporary Shortages:** Employers hire H-1B professionals to obtain essential technical skills or knowledge that is relatively unique and not readily found in the U.S. or fulfill temporary shortages of needed skills.

**Global market expertise:** Employers often need H-1B professionals to bring special expertise in overseas needs, markets or trends that enables U.S. businesses to compete globally.

### What Must Employers Do?

**Protect wages:** Employers must pay a wage to every H-1B worker that is at least as much as what is typically paid in the region for that type of work (prevailing wage, or what the employers pays existing employees with similar experience and duties.)

**Protect working conditions:** Employers cannot use H-1B professional to break a strike, and must notify their U.S. workforce when they hire an H-1B professional. Employers cannot make the H-1B nonimmigrant work under conditions different from their U.S. counterparts, including hours, shifts and benefits.

**Not Displace U.S. workers:** Employers who use a lot of H-1Bs must first try to find U.S. workers before they can hire an H-1B. They also must attest that they are not hiring the H-1B if they have laid off or displaced a similarly situated U.S. worker. Employers must attest to the above protections by affirmatively filing with the

Department of Labor (DOL) and by maintaining a file open to the public.

**Be subject of penalties:** Failure to comply with DOL regulations can result in an audit, civil and administrative penalties, payment of back wages, and even debarment from participating in key immigration programs.

**What are the basic requirements for the employer to file H-1B visa petition for foreign worker?**

**1. U.S.EMPLOYER**

The employer seeking the services of an H-1B alien and filing the necessary papers to obtain such services must be a **U.S.EMPLOYER**. A U.S. Employer is a person, firm, corporation, contractor or other association or organization in the United States with an IRS tax ID number.

**2. PROOF OF PROFESSIONAL-LEVEL JOB**

The employer needs to prove that the job offered to the alien worker is a “**Specialty Occupation.**” Sometimes, as with the positions for physicians, accountants and similarly recognized professions, the high level of the work is common knowledge. In such cases, the employment agreement will serve to prove both the existence and the level of the job.

Where it is not evident that the position is a “Specialty Occupation,” additional documents are required. The detailed description of all job functions, with an explanation of how advanced knowledge and education are essential to their performance should be submitted to INS along with the petition forms.

**3. PROOF OF EMPLOYER’S ABILITY TO PAY EMPLOYEE’S SALARY**

The employer must be able to **prove its existence and financial viability**. If the employer is large and well known, it is usually enough to state the annual gross receipts or income in the petition forms and letter it submits which describes the job opportunity and duties. If the employer is small, the INS may request documents to verify the existence and financial solvency of the employer’s business.

Publicly held companies do not have to produce tax returns, accounting records or bank statements. For them, annual reports of the past two years are accepted to prove ability to pay wages. Again, the larger the company, the less evidence the INS demands of its ability to pay

additional salaries.

**What are the basic requirements for the employee?**

**1. PROOF THAT THE WORKER IS PROFESSIONAL**

To qualify for an H-1B visa, the worker must show evidence that he/she has a **bachelor's degree** or the equivalent. This evidence should include copies of diplomas and transcripts from the colleges and universities. If the worker was educated outside the U.S., the INS may request a credential evaluation from an approved evaluation service. Also, **the position offered from the employer must be related to the degree.**