



EXPLANATION OF THE H-1B WORK VISA

The H-1B Nonimmigrant category is a temporary visa classification that is initially valid for three years, and an extension may be granted for a second period of three years, total of up to six years. In order to obtain this visa, a US company must petition for the foreign citizen through an offer of employment in a professional position; and must be willing to pay the alien **at least the prevailing wage** for that position. Prevailing wage is determined by the Department of Labor.

A professional position is one which requires a specialized knowledge or skill such that is generally obtained through attainment of a Bachelor's Degree or its equivalent. In order to qualify, the foreign national must have completed a minimum of four (4) years of university study or its equivalent in work experience in the field of the preferred employment.

The first step in obtaining the classification is to file a Labor Condition Application (LCA) with the US Department of Labor (DOL). The LCA, must be executed by the employer. In signing this form, the employer affirms that the H-1B Worker will be paid at least "the required wage rate" for the occupation and the employment of the H-1B Worker will not adversely affect the working conditions of workers similarly employed in the area of intended employment.

Once the LCA is certified, the next step is to file a Petition for Nonimmigrant Worker, with the U.S. Citizenship and Immigration Services (USCIS) to obtain permission to hire the H-1B worker. The petition is accompanied by documentation regarding the position and the alien's credentials. One of these documents is a letter from the employer offering employment to the alien. Our office will provide a sample draft of this letter to the employer. The normal processing time for an H-1B application with the USCIS three to five months, however, there is a process called Premium Processing wherein the applicant may pay an additional \$1,225 to the USCIS and the application will be processed within 15 working days. The alien may commence employment for the employer once the H-1B petition is approved. The employer is not obligated to employ the alien for three years, but is only authorized to employ the alien for no longer than three years, unless an extension is obtained.

The employer has an obligation to pay the costs of return transportation for any H-1B worker whose period of employment is terminated prior to the expiration date of the worker's status. The USCIS expects employers to meet this obligation although it does not directly verify compliance. In addition, the H-1B Reform Act of 2004 re-institutes the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) fee of \$1500. Petitioners who employ no more than 25 full-time equivalent employees, including any affiliate or subsidiary, can submit a reduced fee of \$750.