

FAYETTEVILLE STATE UNIVERSITY

Sponsorship of Foreign Nationals for H-1B Visas

- Authority:** Issued by the Chancellor. Changes or exceptions to administrative policies issued by the Chancellor may only be made by the Chancellor.
- Category:** Employment – Employees Exempt from the State Personnel Act
- Applies to:** ●Faculty ●Staff
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- Related Policies:** Various federal laws and regulations including the Immigration and Nationality Act (INA) and 20 CFR 655.
- Contact for Info:** General Counsel (910) 672-1145
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I. Introduction

Fayetteville State University (FSU) has established this policy and the accompanying procedures (Appendix A) to provide details on the filing of petitions for H-1B visas.

FSU is responsible for petitioning the United States Citizenship and Immigration Services (USCIS) for H-1B visa status on behalf of a foreign national. All H-1B petitions based on employment at the university must be processed by the General Counsel's Office. The feasibility of petitioning for H-1B status is contingent upon several factors such as funding, salary, job requirements, and both the educational background and the current immigration status. (if any) of the foreign national.

The university will sponsor for H-1B visas only full-time employees in professional positions.

The information contained herein is to assist departments in hiring foreign nationals in specialty occupations. Complex and ever changing immigration regulations make it imperative for administrators who wish to hire a foreign national in a professional position to consult with the General Counsel's Office before making any formal offer of employment.

II. Overview of H-1B Program

The H-1B program allows an employer to employ a foreign national temporarily in the U.S. on a nonimmigrant basis in a specialty occupation. A specialty occupation requires theoretical and practical application of a body of specialized knowledge along with at least a bachelor's degree or its equivalent. Architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts are considered specialty occupations

A. Methods of Obtaining an H-1B Visa - H-1B status may be obtained as follows:

1. **Change of Status** - A petition may be filed requesting a change to the foreign national's current visa status (e.g., student visa).
2. **H-1B Portability** - Portability allows a foreign national who has previously been issued an H-1B visa or otherwise accorded H-1B status and who has been lawfully admitted to the U.S. to begin working for a new H-1B employer as soon as the new employer files a "no frivolous" H-1B petition on the foreign national's behalf. Portability is allowed if the following criteria are met:
 - (a) the nonimmigrant was lawfully admitted to the United States;
 - (b) the non-frivolous petition for new employment was filed before the end of the period of authorized stay;
 - (c) the nonimmigrant has not been employed without authorization since his or her lawful admission to the United States; and
 - (d) The nonimmigrant was not employed without authorization before the filing of the non-frivolous petition.
3. **Entry from Abroad** – Application may be made for an H-1B status for an individual who is currently not in the U.S. Once approval is given, the individual must apply for the H-1B visa stamp at a U.S. consulate abroad and then enter the U.S.

A foreign national who is in the U.S. and has an application pending before the USCIS should not leave the U.S. while the application is pending. To leave the U.S. while an application is pending is to abandon the petition.

B. J-1 Visa Holders - Foreign nationals who have previously been in the U.S. on a J1 visa *may* be subject to a two-year home residency requirement. A foreign national who is subject to the two-year home residency requirement must obtain a waiver from USCIS or have completed the two-year home residency before FSU can submit a petition for H-1B status.

C. Processing Time - In general, the standard processing time for an H-1B petition is approximately four to six months. In addition to the standard processing of an H-1B petition, the USCIS has instituted an optional premium processing for an additional fee of \$1,225.00. The \$1,225.00 fee is in addition to the standard filing fee of \$325.00 (plus \$500.00 anti-fraud fee). With premium processing, the USCIS guarantees that it will issue an approval, request additional evidence, or send notice of intent to deny within fifteen (15) business days from the date the petition or application was received at the USCIS Service Center. Therefore, processing time for an H-1B petition filed through premium processing may take approximately one to three months instead of the usual four to six months.

D. Period of Validity - A foreign national can be in H-1B status for a maximum continuous period of six years. After the H-1B expires, the foreign national must remain outside the U.S. for one year before another H-1B petition can be

approved. Certain foreign workers with labor certification applications or immigrant visa petitions in process for extended periods may stay in H-1B status beyond the normal six-year limitation in one-year increments.

E. Employment Restrictions - Employment restrictions apply as follows:

1. **Employment Start Date** – Employment may not start before the approved date on the I-797 USCIS approval notice, which will be given to the employee as soon as it is received by the General Counsel’s Office. However, if the foreign national currently has valid USCIS employment authorization in another nonimmigrant status. (e.g. F-1) for employment at FSU, s/he may continue to work in that status until it expires and then resume work once the H-1B visa petition is approved.
2. **Changes to Appointment/Employment** - Once an individual has obtained H-1B visa status for employment at the university, any changes in salary, full-time equivalency (FTE), site of employment, position, or job duties must be reported to the General Counsel’s Office. In some cases, an amended H-1B visa petition will need to be filed prior to any changes occurring in the appointment. Processing times can take several months, and no new job duties, new FTE or location, etc. may commence until an amended petition is filed.

F. Dependent Family Members of an H-1B Beneficiary - The following applies to family members who accompany the foreign national:

1. The spouse and minor children (under 21) of an H-1B beneficiary who is changing status within the U.S. must file concurrently for a change of status to H-4 unless they have independent nonimmigrant status. To file for an H-4, the dependent should complete Form I-539 (available online at the USCIS website). Information on additional dependents should be given on the I-539 supplement. A spouse and minor children not in the U.S. may apply for H-4 dependent status at a U.S. consulate after the H-1B beneficiary has been approved. **H-4 dependents do not have employment authorization and are not allowed to work in the U.S.**
2. A filing fee of \$290.00 shall accompany an application for a dependent already in the U.S. The beneficiary is responsible for paying the filing fee. Checks or money orders shall be made payable to USCIS.

G. Extensions of H-1B - Requests for H-1B extensions shall be submitted 3-5 months before the end of the authorized employment. The hiring department shall complete and submit to the General Counsel’s Office another H-1B application and ALL required documents in the packet for both the employee and accompanying family members. Once an application for extension is filed with USCIS and receipted, the H-1B beneficiary may continue employment while the application is processed by USCIS. If no extension is requested, the employee should a) have another employer submit an H-1B petition, b) apply for another nonimmigrant status, or c) depart the U.S.

H. Delays and Early Terminations - Termination of employment before the authorized end date shall be reported to the General Counsel's Office. If the department terminates employment for any reason before the designated end date on the H-1B approval notice, the department is responsible for the return cost of transportation for the employee to return home. The return cost of airfare is defined as a "one-way" economy fare for the employee to the country of residence. The department is not obligated to pay for the return cost of transportation for the employee's dependent(s).

APPENDIX A

FAYETTEVILLE STATE UNIVERSITY Procedures and Checklist for Filing H-1B Applications

The initial request for an H-1B visa must come from the interested department - not the foreign national. The foreign national's department chair is responsible for Step 1 as outlined below. The General Counsel's Office is responsible for Steps 2, 3 and 4.

STEP 1: Prepare the application - The General Counsel's Office will not begin the application process until all application materials are submitted. All required forms must be submitted as one application packet.

___ **H-1B Visa Request form (Appendix A.1)**
Complete with all appropriate signatures.

___ **Prevailing Wage Determination (Appendix A.2)**
The department should complete the Prevailing Wage form based on the minimum requirements for the position not the credentials/experience of the foreign national. The General Counsel's Office will secure a prevailing wage determination for the position. The prevailing wage indicates the average salary for our geographic area for the occupation in which the foreign national will be employed. The law permits a minimum salary of 95% of the prevailing wage to be paid to the foreign national. If the salary offered is not within 95% of the prevailing wage, the hiring department must either agree to pay the Prevailing Wage or FSU will be unable to proceed with filing the H-1B petition.

___ **Actual Wage Determination (Appendix A.3)**
The department should complete the *Actual Wage Determination* form based on the other employees in the department with similar experience and qualifications as the H-1B beneficiary. The actual wage is the rate paid to all individuals in the department with similar experience and qualifications as the H-1B employee. **FSU must pay H-1B employees at least the prevailing wage or the actual wage, whichever is higher.**

___ **Two copies of the following documents**
The department should work with the foreign national to prepare all documents on the following *Checklist*:

- ___ Copies of foreign national's resume
- ___ Employment history in the U.S. within the past six years (See attached.)
- ___ Copy of highest diploma (with translation and evaluation if not from a U.S. university)
- ___ Copies of past/current visa documents.
For F1 Visa holders: All *Form I-20s* issued; copy of *Employment Authorization Document (EAD)* if in F-1 Practical Training.
For H-1B Visa Holders: Copy of current I-797 approval notice if H-1B request is for renewal/extension/new employer.
- ___ Copies (**front and back**) of Form I-94 (arrival/departure card)

___ Copies of visa and passport

___ The General Counsel's Office will be responsible for paying the \$325.00 filing fee for H-1B beneficiary and the \$500 for *Fraud Prevention and Detection Fee*. FSU departments are responsible for paying premium processing fees, if the department selects this option. If choosing the premium processing option, departments should provide a check to the General Counsel's Office in the amount of \$1,225.00. **payable to USCIS**.

___ **If dependent family members are already in the U.S. please also submit three (3) copies of the following:**

___ Form I-539, prepared and signed by the spouse, for a change of status or extension of H-4 status to coincide with the petition dates covered in the I-129. I-539 forms are available from the General Counsel's Office.

___ Copies of dependents' I-94 cards

___ Copies of dependents' visas and passport pages

___ Filing fee by check or money order (\$290.00) payable to USCIS

The \$290 filing fee includes payment for all dependents already in the U.S.

The foreign national is responsible for paying the filing fees.

Notes:

Department chairs should submit original applications and extension/amendment applications to the General Counsel's Office 3-5 months before the hire date or the expiration date on the H-1B approval notice.

Department chairs should notify the General Counsel's Office when an H-1B holder is scheduled to leave the university. If the department terminates employment for any reason before the designated end date on the H-1B approval notice, the department is responsible for the return cost of transportation for the foreign national to return home.

STEP 2: Labor Condition Application

The General Counsel's Office will file a *Labor Condition Application* (LCA) with the U.S. Department of Labor based upon receiving information on the prevailing wage and actual wage determinations. The department or designated official will be asked to sign this document. This step is required to monitor and prevent the employment of H-1B employees when the employment would potentially have an adverse impact on the wages and working conditions of U.S. workers.

___ LCA job posting: When the LCA is filed, the hiring department will be asked to post information about the position for ten (10) working days on bulletin boards located in conspicuous locations at the place of employment and write on the notice the dates and locations where they were posted.

STEP 3: Application submitted to USCIS

Once the Department of Labor returns the certified LCA, the General Counsel's Office will file a petition with the USCIS to classify the foreign national as an H-1B temporary worker. The certified LCA is part of the H-1B petition filed with USCIS. Copies of all the application/documents will be kept on file in the General Counsel's Office for public inspection by USCIS and/or Department of Labor investigations.

STEP 4: Approval of H-1B Visa Application by USCIS

After USCIS approves the visa application, the University will be sent an approval notice (form I-797). If the foreign national is already in the U.S., the General Counsel's Office will provide a copy of Form I-797 to the department chair. If the foreign national is outside the U.S., the General Counsel's Office will provide the visa packet necessary for the foreign national to apply for a visa at the U.S. Consulate abroad.

APPENDIX A.1

H-1B VISA REQUEST FORM

The following information is to be completed by the hiring department. Please keep a copy for departmental records.

I. FOREIGN NATIONAL APPLICANT INFORMATION

Last Name of Foreign National	First Name	Middle Name

US Social Security Number (if none, leave blank)
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Date of Birth (mm/dd/yy)	Country of Citizenship
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Country of Legal Permanent Residence

Foreign Address

Current Address	Phone Number
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Departmental Contact Name	Telephone #
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II. VISA STATUS INFORMATION

Current Visa Status (mm/dd/yy)	Date of Arrival (mm/dd/yy)	Current Stay Expires
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Has the foreign national ever been in J-1 status? Yes_____ No_____

If applicant is on a J-1 visa and subject to 212(e), did s/he receive a non-objection letter from the Department of State or waiver of 212(e)? Yes_____ No_____

Has the foreign national ever been in H-1B status? Yes_____ No_____

If yes, please indicate dates and submit copies of all prior I-797 approval notices.

III. POSITION INFORMATION

Title: _____

FSU Position Number (if applicable): _____

Proposed/Actual Salary: _____

Source of Funding: _____ If a grant, then funding end date: _____

Proposed/Actual Date of Hire (mm/dd/yy): _____

Does this position include FSU sponsored health insurance and benefits? Yes _____ No _____

IV. EMPLOYEE TYPE

- EPA
- SPA
- Tenured
- Tenure-Track
- Fixed-term (non-tenure track)

This request is for:

- New appointment
- Extension of stay
- Amendment to appointment
- Transfer (already in US)
- Replace lost documents
- Other _____

Please provide a description of the position and associated duties and responsibilities

V. CERTIFYING SIGNATURE

By signing this document you agree to the following:

1. The department will not employ the foreign national until the General Counsel’s Office has sent written notification to the department chair indicating the eligibility of the foreign national to be employed at FSU.
2. The foreign national will be supervised by the department chair whose name appears below.
3. The teaching and/or research is consistent with the objectives and limits of the Department of Labor (H-1B visa) and US Immigration regulations.
4. The department will consult with the General Counsel’s Office regarding significant changes to the FSU appointment (including position title and description, salary, FTE, and dates).
5. The department will notify the General Counsel’s Office of termination and/or departure of the international employee.

Signature of Department Chair

Date

Please return form to the General Counsel’s Office. Thank you.

PREVAILING WAGE FORM

1. Name of Employer (Full name of organization): Fayetteville State University				2. Telephone (Area code and Number): (910) 672 -1145	
3. Address Where Alien will work:					
4. Nature of Employer's Business: Education/Research		5. Job Title:		6. Total Hrs. Per Week:	7. Rate of Pay: \$ _____ per year
8. Describe fully the job to be performed (Duties): _____ _____ _____ _____					
9. Special Requirements: _____ _____					
10: State in detail the minimum education, training, and experience for a worker to perform satisfactorily the job duties in item 8.					
Education (enter no. of years)	Grade School	High School	College	College degree (specify major)	
Training	Yrs.	Mos.		11: Supervisor? Y/N: _____ How Many? _____	
Experience	Yrs.	Mos.	Type of training		

APPENDIX A.3

ACTUAL WAGE DETERMINATION (REQUIRED FOR H-1B PETITION)

Before an employer can submit an H-1B petition on behalf of a foreign national, U.S. federal law requires that the employer document that the employee will be paid the “actual wage” for his/her position. The actual wage is defined as the range paid to all individuals in the department with similar experience and qualifications as the prospective H-1B worker for the position. The prospective H-1B employee will be considered to be receiving the actual wage if his or her salary falls within or above the range of wages currently paid to comparable employees in the same department. Where no other such employees exist at the place of employment, the actual wage shall be the wage paid to the H-1B non-immigrant by FSU.

Name of Prospective H-1B Employee: _____

Education (degrees held by prospective employee): _____

Number of years of relevant post-degree experience of prospective employee: _____

Position Title: _____ Salary: _____ FTE: _____

Brief description of job duties: _____

In order to document the actual wage, please list all individuals in the department with the same position title (both non-immigrants and US citizens). The department chair must sign this form. Return to the General Counsel’s Office with other document.

When citing salary differential, the following criteria **may** be used to show why another employee is being paid at a higher wage than the prospective H-1B employee:

- Employee has more relevant work experience than the prospective H-1B employee
- Employee has more responsibility
- Employee has higher/more relevant educational credentials
- Employee does not work the same number of hours

The following criteria **may not** be used to indicate why another employee is being paid at a higher wage than the prospective H-1B employee:

- Employee is funded by a different grant than the prospective H-1B employee
- Employee has a different area of research
- Employee demanded more salary
- FSU salary freeze (past or present) resulted in different pay
- Insufficient, uncertain, or change of funding

LIST OF EMPLOYEES IN THE DEPARTMENT WITH SAME JOB TITLE

Employee's Name	Current Salary*
1 _____	_____
2 _____	_____
3 _____	_____
4 _____	_____
5 _____	_____
6 _____	_____
7 _____	_____
8 _____	_____
9 _____	_____
11 _____	_____
12 _____	_____
13 _____	_____
14 _____	_____
15 _____	_____

Please attach additional sheet, if necessary. *If salary is higher, please attach a separate sheet explaining why.

I certify that the information contained on this Actual Wage Statement is correct and that the prospective H-1B employee is or will be paid the actual wage for this position.

Signature of Department Chair

Date