

HAUSWIESNER KING LLP

H-1B – Q&A

What is an H-1B visa?

An H-1B visa allows an alien to come temporarily to the United States to perform services in a specialty occupation.

What is a specialty occupation?

Occupation that requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum of entry into the occupation in the United States.

What documents must be filed?

- 1) Evidence that a labor condition application has been filed with the Department of Labor
- 2) Evidence showing that the proposed employment qualifies as a specialty occupation
- 3) Evidence showing that the alien has the required degree
- 4) A copy of any required license or other official permission to practice the occupation in the state of intended employment
- 5) A copy of any written contract between the employer and the alien or a summary of the terms of the oral agreement under which the alien will be employed

When can I file?

The petition may not be filed more than six months prior to the date employment is scheduled to begin. However, the petition should be filed as soon as possible before the proposed employment begins or before an extension of stay is required

What are the filing fees?

There are four different fees:

- 1) \$320 (base fee)
- 2) a) \$750 (for US employers with a total of 25 or less full time employees)
b) \$1,500 (for US employers with more than 25 full time employees)
- 3) \$500.00 (Fraud Prevention and Detection Fee)

Typically, US employers have to pay 1) + 2) + 3) which amounts to a total of \$2,320 for US employers with more than 25 full time employees. In case, the US company seeks a timely processing of their application, it can opt for Premium Processing which costs an additional \$1,000.

How long can the employee stay?

H-1Bs are initially issued for a period of up to three years. Extensions may be obtained, but the total period of authorized stay cannot exceed six years, unless the individual has progressed through the requisite steps leading toward permanent residency. If the employer dismisses the alien prior to the expiration of the authorized stay, the alien has to leave the United States and the employer is liable for the reasonable cost of returning the alien to his native country.

What are the main challenges to obtain an H-1B visa?

The main challenge is to provide evidence showing that the proposed employment qualifies as a specialty occupation. While certain professions (for example software developers, medical doctors) qualify easily, this is much harder for jobs that can be performed by people without a college degree.

Generally, the higher the level of qualification which is required for the particular job, the easier it is to qualify for an H-1B.

In addition, the limited number of available H-1B visa numbers is a problem: In April of 2007, for the first time ever, there were more than three times as many H-1B applicants than available visa numbers on the first possible filing date. The United States Citizenship and Immigration Services solved the problem by using a lottery system which meant that most H-1B petitions were sent back without having been looked at.

It has to be seen whether the number of available H-1B visa numbers will be increased in the very near future to avoid uncertainty among employers and prospective employees.