



H-1B and employment-based visas

DREW WEBSTER

GEORGIA STATE UNIVERSITY

Types of employment-based visas

Those typically sponsored by universities

- ▶ H-1B: Specialty occupation
- ▶ O-1: Worker with extraordinary ability
- ▶ TN: NAFTA professionals
- ▶ E-3: Specialty occupation for Australians

Almost all of these are applied for using the Form I-129

H-1B

Employment must:

- Be a “specialty occupation”
- Require a minimum of a bachelor’s degree or higher
- Job title must be included in our policy



Non-immigrant must:

- Hold a U.S. bachelor’s degree or equivalent in the area of specialty
- Hold a state license to practice the profession (if applicable)
- Not be subject to 212(e): Two-Year Home Residency Requirement

****H-1B status holders can have immigrant intent (“dual intent”)****

H-1B

Necessary for tenured or tenure-track positions

Preferred for non-tenured positions for individuals that would be subjected to the 2-year home residency requirement by obtaining J status

Status is for temporary employment

- Increments of up to 3 years
- 6 years total is permitted in regulation, with few exceptions
- 10 day grace period at beginning and end of status

Employer specific

- Cannot work outside of their employer
- Changes in employment may necessitate an amended H-1B petition

Types of H-1B Petitions

Initial Petition

- ▶ Can be a Change of Status OR Consular Processing but both require prior USCIS adjudication
 - ▶ If cap-subject employer, must file April 1st for an October 1st start date.

Amended Petition

- ▶ Any “material changes” in employment require another H-1B petition to be submitted

Extension Petition

- ▶ Granted automatic 240 day extension of status if filed by current status end date

Transfer Petition

- ▶ Treated as “new” by new employer, but has benefit of “portability” – can start work immediately upon petition submission

Fees

Employer fees

- \$460 USCIS filing fee
- \$500 anti-fraud fee (initial/transfer petitions only)

Scholar or Employer

- \$1225 premium processing fee
- \$390 I-539 filing fee (for in-country dependents)

H-1B General Steps

1. Documentation Submitted
2. Wage Determinations
3. Labor Condition Application
4. I-129
5. Receipt Notice
6. (RFE)
7. Approval w/ I-797. If outside of country, I-797 mailed to beneficiary to apply for H-1B visa

► Processing time of I-129: Varies, has gotten up to 8 months

► Premium Processing 15 calendar days for a response. Extra \$1225 fee, can be paid by dept or scholar

Documentation Requested at GSU for H-1Bs

From Department

- ▶ Department Initiation E-form
- ▶ Declaration of Department to abide by H-1B regulations
- ▶ Documentation of Employees in a Similar Classification
- ▶ Export Control E-form
- ▶ Letter of Support (template given to them)


Documentation Requested at GSU for H-1Bs

From Scholar

- ▶ H-1B Questionnaire E-form
- ▶ Degree
- ▶ CV
- ▶ If on OPT, Academic Training or current employment-based status, last 3 months of earning statements
- ▶ Immigration Documents

Immigration Documents from Scholar

- Passport, visa, I-94, any previous I-797s for this entry.
- If in F status, most recent I-20
- If on OPT, all EAD cards issued
- Any DS-2019s or J-1 visas ever held
- If subject to 212e, need
 - DOS No Objection Letter
 - I-797 Approval of I-612 waiver
 - OR a letter stating the dates they were in their home country

 United States Department of State
Washington, D.C. 20520

November 10, 2015

Vermont Service Center
DHS/USCIS
Attn: Waiver Review Section
Post Office Box 800
St. Albans, VT 05479-0800

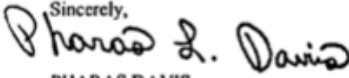
Re: DoS# **Argentina** DOB: COB: **Argentina** COR:

Subject: **212(e) Waiver** Recommendation based on a(n) **No Objection** application

Dear Director:

After a thorough review of the request, the Department recommends to the U.S.C.I.S. that the exchange visitor and members of the immediate family, if applicable, be **GRANTED** a waiver. Please note this does not include any member of the family who is subject to the residence requirement as a result of his or her own J-1 visa status.

Any other existing application(s) submitted to the Department, for the exchange visitor will now be closed. This concludes the Department's involvement in this case. Any further action concerning this waiver falls under the jurisdiction of the U.S.C.I.S.

Sincerely,

PHARAS DAVIS
Waiver Review Division

cc: Embassy of Argentina

The Ranchod Law Group P.C.-Kaushik Ranchod

Enc: No Objection Statement
DS-3035

H-4 dependents

- If outside country, dependents only need copy of I-797 approval for primary, marriage/birth certificates, passport
- If inside country, I-539 needed with typical docs.
- Can study
- Cannot work, in general

Export Control

- The release of controlled technology or technical data to foreign persons in the United States
- *Visual Compliance*: If any name or country “hits” occur, then we notify Legal Affairs to do a background check.



Letter of Support

- Job description & minimum requirements
- Language about temporary nature of employment
- Dates of employment
- Beneficiary's qualifications
- *Return travel guarantee*: If an employer terminates an H-1B worker's employment prior to the expiration date of their H-1B status, the employer must offer to pay the cost of transportation to return the individual to her/his home country

Wage Determinations

Prevailing Wage Determination

- ▶ Survey of wages in Metropolitan Statistical Area (MSA) to see what the various wage levels are for duties NOT position title.
- ▶ There are four levels. Everyone starts out at level 1. If we are requiring more (aka PhD for duties that normally require a Masters in the MSA) then we must go up a wage level.
- ▶ Can be done “in-house” or through DOL’s iCert system, though that can take up to 3 months.

Actual Wage Determination

- ▶ Salary of prospective H-1B must be within the range of salaries paid by the department to all workers of the same job title and experience.

Whichever is higher, Prevailing Wage or Actual Wage, that then becomes the base level wage that the employee must be paid at the time their H-1B begins.

Foreign Labor Certification Data Center Online Wage Library

www.flcdatcenter.com



Wage Library

[Quick Search](#)
[Search Wizard](#)

Case Disclosure Data Archive

[H1B Data](#)
[H2A Data](#)
[H2B Data](#)
[Perm Data](#)

Also available: File Archive

[Skill Level
Explanation](#)

[SVP Explanation](#)

[FLC Wage Data
updated
July 1, 2017](#)

[Job Zones updated
August 26, 2016
See change
history](#)

[Technical Support
& Help FAQ page.](#)

FLC Wage Results [New Quick Search](#) [New Search Wizard](#)

You selected the ACWIA - Education Industry database for 7/2017 - 6/2018.

Your search returned the following: [Print Format](#)

Area Code: [12060](#)
Area Title: Atlanta-Sandy Springs-Roswell, GA MSA
OES/SOC Code: 17-2143
OES/SOC Title: Mechanical Engineers, Non-R&D
GeoLevel: 4
Level 1 Wage: \$29.48 hour - \$61,318 year
Level 2 Wage: \$34.18 hour - \$71,094 year
Level 3 Wage: \$38.89 hour - \$80,891 year
Level 4 Wage: \$43.59 hour - \$90,667 year
Mean Wage (H-2B): \$38.89 hour - \$80,891 year

This wage applies to the following O*Net occupations:

17-2141.00 Mechanical Engineers

Perform engineering duties in planning and designing tools, engines, machines, and other mechanically functioning equipment. Oversee installation, operation, maintenance, and repair of equipment such as centralized heat, gas, water, and steam systems.

O*Net™ JobZone: 4

[Education & Training Code: 5-Bachelor's degree](#)

For information on determining the proper occupation and wage level see the new Prevailing Wage Guidance on the [Skill Level page](#).

The prevailing wage must be at, or above the federal or state or local minimum wage, whichever is higher. The federal minimum wage is \$7.25/hr effective July 24, 2009.

Labor Condition Application (LCA)

- ▶ The LCA is Form ETA 9035 filed with the Department of Labor via the electronic iCert system.
- ▶ After filing, takes about 7-10 business days to certify.
- ▶ Can only file 6 months prior to requested start date.
- ▶ We must post a notice of intent to hire an H-1B employee in two public spots after filing the LCA for 10 business days.
 - ▶ This is NOT an attestation to hire U.S. workers.

Labor Condition Application for Nonimmigrant Workers
ETA Form 9035 & 9035E
U.S. Department of Labor



**Electronic Filing of Labor Condition Applications
For The H-1B Nonimmigrant Visa Program**

This Department of Labor, Employment and Training Administration (ETA), electronic filing system enables an employer to file a Labor Condition Application (LCA) and obtain certification of the LCA. This Form must be submitted by the employer or by someone authorized to act on behalf of the employer.

A) I understand and agree that, upon my receipt of ETA's certification of the LCA by electronic response to my submission, I must take the following actions at the specified times and circumstances:

- print and sign a hardcopy of the electronically filed and certified LCA;
- maintain a signed hardcopy of this LCA in my public access files;
- submit a signed hardcopy of the LCA to the United States Citizenship and Immigration Services (USCIS) in support of the I-129, on the date of submission of the I-129;
- provide a signed hardcopy of this LCA to each H-1B nonimmigrant who is employed pursuant to the LCA.

☐ Yes ☐ No

B) I understand and agree that, by filing the LCA electronically, I attest that all of the statements in the LCA are true and accurate and that I am undertaking all the obligations that are set out in the LCA (Form ETA 9035E) and the accompanying instructions (Form ETA 9035CP).

☐ Yes ☐ No

C) I hereby choose one of the following options, with regard to the accompanying instructions:

☐ I choose to have the Form ETA 9035CP electronically attached to the certified LCA, and to be bound by the LCA obligations as explained in this form

☐ I choose not to have the Form ETA 9035CP electronically attached to the certified LCA, but I have read the instructions and I understand that I am bound by the LCA obligations as explained in this form

Public Access File



A publicly available file to show all of the Department of Labor steps. Includes the following:

- Actual Wage Determination documentation
- Prevailing Wage Determination documentation
- Documentation of LCA and postings

****Must be kept up to one year after the ending of an H-1B's time, whether by status expiration or termination****

Form I-129

Petition for Non-Immigrant Worker

36 page document

For H-1Bs: pages 1-8, 13-14, 19-21

Generally provide information about

- The university
- The type of H-1B petition
- Scholar's current and previously held statuses
- Job position and duties
- Scholar's experience (work and education)



Petition for a Nonimmigrant Worker

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-129
OMB No. 1615-0009
Expires 12/31/2018

For USCIS Use Only	Receipt	Partial Approval (explain)	Action Block
	Class: _____ No. of Workers: _____ Job Code: _____ Validity Dates: _____ From: _____ To: _____	<input type="checkbox"/> Classification Approved <input type="checkbox"/> Consulate/POE/PFI Notified At: _____ <input type="checkbox"/> Extension Granted <input type="checkbox"/> COS/Extension Granted	

► **START HERE** - Type or print in black ink.

Part 1. Petitioner Information

If you are an individual filing this petition, complete **Item Number 1**. If you are a company or an organization filing this petition, complete **Item Number 2**.

1. Legal Name of Individual Petitioner

Family Name (Last Name)	Given Name (First Name)	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

2. Company or Organization Name

3. Mailing Address of Individual, Company or Organization

In Care Of Name			
<input type="text"/>			
Street Number and Name	Apt. Ste. Flr.	Number	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
City or Town	State	ZIP Code	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Province	Postal Code	Country	(USPS ZIP Code Lookup)
<input type="text"/>	<input type="text"/>	<input type="text"/>	

4. Contact Information

Daytime Telephone Number	Mobile Telephone Number	Email Address (if any)
<input type="text"/>	<input type="text"/>	<input type="text"/>

5. Other Information

Federal Employer Identification Number (FEIN)	Individual IRS Tax Number	U.S. Social Security Number (if any)
► <input type="text"/>	► <input type="text"/>	► <input type="text"/>

I-797 Approval Notice



RECEIPT NUMBER EAC- [REDACTED]		CASE TYPE I129
RECEIPT DATE January 7, 2011		PETITION FOR A NONIMMIGRANT WORKER
PRIORITY DATE		PETITIONER [REDACTED]
NOTICE DATE March 31, 2011	PAGE 1 of 1	BENEFICIARY A [REDACTED]
[REDACTED] ATTORNEY AT LAW [REDACTED] PO BOX [REDACTED] HOUSTON TX 77242-1807		Notice Type: Approval Notice Class: H1B Valid from 03/31/2011 to 12/14/2013

The above petition and change of status have been approved. The status of the named foreign worker(s) in this classification is valid as indicated above. The foreign worker(s) can work for the petitioner, but only as detailed in the petition and for the period authorized. Any change in employment requires a new petition. Since this employment authorization stems from the filing of this petition, separate employment authorization documentation is not required. Please contact the IRS with any questions about tax withholding.

The petitioner should keep the upper portion of this notice. The lower portion should be given to the worker. He or she should keep the right part with his or her Form I-94, *Arrival-Departure Record*. This should be turned in with the I-94 when departing the U.S. The left part is for his or her records. A person granted a change of status who leaves the U.S. must normally obtain a visa in the new classification before returning. The left part can be used in applying for the new visa. If a visa is not required, he or she should present it, along with any other required documentation, when applying for reentry in this new classification at a port of entry or pre-flight inspection station. The petitioner may also file Form I-824, *Application for Action on an Approved Application or Petition*, with this office to request that we notify a consulate, port of entry, or pre-flight inspection office of this approval.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

U.S. CITIZENSHIP & IMMIGRATION SVCS
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (800) 375-5283
Form I797A (Rev. 09/07/93)N

PLEASE TEAR OFF FORM I-94 PRINTED BELOW, AND STAPLE TO ORIGINAL I-94 IF AVAILABLE

Detach This Half for Personal Records

Receipt # EAC- [REDACTED]

I-94# [REDACTED]

NAME [REDACTED]

CLASS H1B

VALID FROM 03/31/2011 UNTIL 12/14/2013

PETITIONER: [REDACTED]

Receipt Number EAC- [REDACTED]

Immigration and
Naturalization Service

I-94

Departure Record Petitioner: [REDACTED]

14. Family Name [REDACTED]	
15. First (Given) Name [REDACTED]	16. Date of Birth [REDACTED]
17. Country of Citizenship INDIA	

H-1B Misc

- ▶ Recapture
- ▶ H-1B Extension via approved I-140
- ▶ Concurrent Filing
- ▶ Withdrawal
- ▶ 60 day grace period

TN Status

- ▶ Based upon the North American Free Trade Agreement
- ▶ Only certain jobs are eligible to apply for TN; There is a list we have to choose one to match our position
- ▶ Available only to Mexican or Canadian nationals
- ▶ 3 year increments; renewable indefinitely
- ▶ ONLY non-immigrant intent
- ▶ Not available for tenure-track positions
- ▶ TD Dependents are not eligible for work in the United States

TN Process

- ▶ If applying from outside the country, only requires a letter from us
- ▶ If applying inside the U.S., use I-129 process, pages 1-8 & 11-12
- ▶ Whether applying outside or from within, TNs generally receive a lot of scrutiny
- ▶ USCIS fee: N/A if outside, \$460 if inside

O-1 Status

- ▶ For those who have achieved and sustained national or international acclaim for extraordinary ability in the sciences, arts, education, business, or athletics or who have a demonstrated record of extraordinary achievement in the motion picture and television industries.
- ▶ Initial status for 3 years; 1 year increments indefinitely afterwards
- ▶ O-3 dependents not eligible to work in the United States
- ▶ Has a very limited form of dual intent

O-1 Process

- ▶ File I-129, pages 1-8, 26-28
- ▶ Attestation letters, publications, citations, review work, etc. These petitions are generally tree-killers.
- ▶ USCIS fee: \$460, Prem. Proc \$1225

E-3 Status

- ▶ For nationals of Australia only
- ▶ “Treaty investor” visa works similarly to an H-1B
- ▶ Two year increments indefinitely
- ▶ Non-immigrant intent only
- ▶ E-3 dependents can apply for work authorization via an EAD

E-3 Process

- ▶ If outside of the U.S.: Only do an LCA, no I-129
- ▶ If inside the U.S., similar to H-1B, with LCA and I-129, only instead we use pages 1-8 and 11-12.
- ▶ USCIS fee: \$460



Questions?

Contact: awebster@gsu.edu