

H-1B REQUEST FORM for New and Continuing Employees

FOR USE BY GMU DEPARTMENTS WHO WISH TO EMPLOY
INTERNATIONAL PROFESSIONALS IN PERMANENT POSITIONS

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April 1, 2008

*PLEASE SUBMIT ALL FORMS AND DOCUMENTS TO THE
OFFICE OF INTERNATIONAL PROGRAMS AND SERVICES*

GENERAL INFORMATION

H-1B LEGISLATION –

Summary of key provisions affecting Higher Education:

1. **New \$500 anti-fraud fee.** A \$500 "fraud protection and detection fee" has to be paid **by all employers** (including institutions of higher education) who file an H-1B petition: a) initially to grant an alien H-1B status, and b) to allow an H-1B nonimmigrant to change employers. **Effective date:** for petitions filed on and after March 8, 2005. [Sec. 426].
2. **5 percent rule eliminated.** The H-1B and permanent labor certification "prevailing wage 5 percent rule," which considered employers paying no less than 95 percent of the prevailing wage as meeting the prevailing wage requirements, has been eliminated; employers now have to pay at least 100% of the prevailing wage to comply with that wage requirement. **Effective date:** March 8, 2005. [Sec. 423]. **Note: Prevailing Wage will be determined by the LOCATION of the Employment. A GMU Employee working in Maryland or Washington, D.C. must be paid the prevailing wage for that locality.**
3. **Wage survey wage levels increased from 2 to 4.** Surveys used by the government to determine prevailing wages have to provide at least 4 levels of wages commensurate with experience, education, and level of supervision. **Effective date:** March 8, 2005. [Sec. 423].
4. **DOL investigative authority expanded.** This law permanently reinstates DOL's authority to investigate LCA fraud and abuse, and expands that authority to allow DOL to initiate investigations on its own, in addition to investigations based on a specific complaint. **Effective date:** March 8, 2005. [Sec. 424].

FEES:	H-1B Petition (initial and extension)	\$320.00
	Anti Fraud Fee (Paid by Employer for first H-1B)	\$500.00
	Premium Processing Fee (Expedite in 15 days)	\$1000.00

****The employer or employee may pay the petition and expedite fee, GMU must pay the anti fraud fee of \$500 for each new H-1B Petition to include employees already on H-1B transferring to GMU from another school or company.**

WHO QUALIFIES FOR H-1B?

H-1B status may be used to employ nonimmigrant professionals in a permanent position. H-1B status may be held for a maximum of six years. Although J-1 status is most often used to bring temporary international researchers and scholars to George Mason University, H-1B status is sometimes more appropriate. The position must require:

- 1) Theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation.
- 2) A Baccalaureate or higher degree (or its equivalent) in a specific academic discipline as the minimum requirement for entry into the particular position.

Changes of Status to H-1B: For individuals already in the U.S. in another immigration status, the USCIS must approve a change of status. In order to change status within the U.S., a nonimmigrant must be maintaining their current status. Important note regarding J-1/J-2 immigration status: If the nonimmigrant is in J status and is subject to the two-year home residency requirement (or ever was in the past), he/she cannot change to H-1B status until this requirement is either fulfilled or waived. If waived by the Department of State, an official waiver letter must accompany the petition when the case is sent to USCIS.

Maximum Period Allowed: One may hold H-1B status for a maximum period of 6 years. Since the Labor Condition Application must be renewed every three years, H-1B petitions are submitted for three years (or less), and may be renewed until the maximum period of 6 years has been reached. 7th year extensions are permitted under certain conditions.

Part-time H-1Bs: **Part-time H-1Bs are discouraged.** The Department of Labor requires a strict record-keeping of all part-time hours worked, and this makes these H-1Bs much harder to keep up with in terms of compliance. Please consult with OIPS to discuss exceptions to this policy. Cases that merit further discussion will be referred to the Provost's office.

Concurrent H-1Bs: Concurrent H-1Bs are possible, allowing a worker to be employed by GMU and another employer at the same time. **Both employers must file an I-129 petition with USCIS.**

Extensions of H-1B status: H-1B extension procedures are basically the same as the initial H-1B. This packet must again be completed by the department and the employee, and submitted to OIPS with all requested attachments. Please note: employee must include updated CV and last three pay stubs with documentation. If six years have been used, the individual must remain outside the U.S. for a period of one year before the six-year clock can begin again.

H-1B extensions fall under a "240-day rule" - please note that this applies to H1Bs only. *"An H1B alien for whom the employer has filed a timely application for an extension of H1B stay can continue employment for the same employer while the request for extension of stay is pending with USCIS, for a period of up to 240 days beyond the expiration of the prior period of authorized stay."* 8 C.F.R. 274a.12(b)(20)

Return Transportation of Alien: If the employee is dismissed before the end of the authorized period of H-1B employment, **the hiring department** will be responsible for paying the reasonable costs of return transportation to the employee's home country. This USCIS regulation was implemented to ensure that

the foreign national would not be stranded in the U.S. without being able to return to his/her home country. Because of this regulation, H-1B status should be requested only for that length of time for which funding is available.

GMU Liability: Submission of an H-1B petition by GMU on behalf of a prospective employee does not guarantee that the petition will be approved. The approval of such petitions rests with U.S. government agencies--not with GMU. Be assured, however, that every effort will be made by the Office of International Programs and Services to secure the necessary personnel for departmental needs, and to process the paperwork in as timely a manner as possible. **Please note: not all positions will qualify for H-1B status.**

Portability Provision: This provision allows a current H-1B worker who is filing a new H-1B petition for employment with GMU to begin working here as soon as we have confirmation that USCIS received the petition, rather than waiting for the petition to be approved. **There should not be a gap in the end date of the previous H-1B approval and the beginning of the GMU H-1B request date or the employee will be required by U.S. Dept. of Homeland Security to leave the U.S. and obtain the new H-1B visa through Consular Processing at a U.S. Embassy Outside the United States.**

Fees: The filing fee for the H-1B Petition for Nonimmigrant Worker (Form I-129) is \$320. If family members are changing to H4 or extending their H4 visa status, form I-539 must be completed, and the filing fee of \$300 must accompany that form. If Premium Processing is necessary, the filing fee for form I-907 is \$1,000. All payment must be by check or money order, made payable to **The Department of Homeland Security**. The Fraud Prevention and Detection Fee (if applicable) is \$500. This fee is **the responsibility of the employer** (hiring department), not the prospective employee. This separate check should be made payable to **Department of Homeland Security**. Departments that wish to cover the cost of the I-129 petition and/or premium processing must request checks well in advance. If needed, OIPS will supply a letter to be submitted with the check request.

INITIATING THE H-1B PROCESS

Call the Office of International Programs and Services (OIPS) at 993-2970 or 993-2952 to discuss the case and to ask any questions you may have. Upon receipt of the completed H-1B Packet and all attachments, the following steps must be taken by OIPS prior to filing the case with Citizenship and Immigration Services.

- The prevailing and actual wages for the position must be determined. OIPS sends a description of the position and salary to the State Workforce Agency, requesting a “prevailing wage determination.” The reply will state the prevailing wage for this type of position in the area of intended employment, and will indicate whether the offered salary meets the prevailing wage or not. This step generally takes more than a week.
- The University must attest that the higher of the two wages will be paid to the employee, that the employee is not being employed because U.S. workers are out on strike or lockout; that the employment of the foreign national will not adversely affect the working conditions of other workers, and that proper notification was given of the university’s intent to hire an H-1B nonimmigrant. This is done by filing a Labor Condition Application (LCA) with the Department of Labor. OIPS does this electronically.
- The H-1B petition and all accompanying documentation, including required fees, will be sent by OIPS to USCIS. The approval process general takes approximately **three to four months** from the time the petition is received at USCIS. **For an additional Premium Processing fee of \$1,000, H-1B cases will be adjudicated by USCIS within 15 calendar days.** If time is short, this is a very useful option. The international visitor cannot begin working until an Approval Notice is received from USCIS in the Office of International Programs and Services. Portability provisions apply for those already in valid H-1B status (see “portability provision” on P.4).

H-1B CHECKLIST

All of the following forms and documents must be submitted to the Office of International Programs and Services. Please be sure to submit the required number of copies.

FROM THE DEPARTMENT:

- _____ H-1B Department Request Form
- _____ H-1B Department Certification Form
- _____ Wage Determination Work Sheet
- _____ Letter from the Department to USCIS in Support of H-1B application
- _____ Please include a **Fedex airbill** with **department Fedex account number** or credit card number to be change for Express mailing

FROM THE PROSPECTIVE H-1B EMPLOYEE:

- _____ H-1B Prospective Employee Information Form
- _____ 4 copies of highest degree certificate/diploma/transcript. Please insure that Transcripts are 2 originals and two copies.
- _____ 4 copies of certified translation of all graduate degrees/diplomas/transcripts (if not in English)
- _____ 4 copies of Resume or Curriculum Vitae
- _____ 4 copies of awards, certificates, licenses, etc. (if applicable)
- _____ 2 most recent pay stubs for those currently employed in the U.S. in any status
- _____ 4 copies of Immigration documents (for those individuals already in the U.S.), most recent I-94 card (front and back), passport identity page and the page with the expiration date, visa page, Employment Authorization Card (including OPT card if applicable), and current and previous immigration forms (DS-2019, I-20, H-1B Approval Notice showing prior periods of stay in H classification, etc.)
- _____ Completed form I-539 for any family members already in the U.S. changing status to H4 or extending H4 status, plus copies of their current and previous immigration documents
- _____ **Required fees:** 1) Petition fee - \$320. Check payable to the Department of Homeland Security; 2) Premium Processing fee (if required) - \$1,000 - check payable to the Department of Homeland Security 3) I-539 (if required for dependents) - \$300. Make separate check or money order payable to the Department of Homeland Security; **4) Fraud Prevention and Detection fee (if applicable) - \$500. This is the responsibility of the hiring department; check should be made payable to the Department of Homeland Security.**

4. Have you ever been denied H-1B status previously? Yes No
 If yes, please provide details on back of this form.
5. Are you currently in exclusion or deportation proceedings? Yes No
6. Have you ever held J-1 status? Yes No
 If yes, were you subject to the 2-year foreign residency requirement?
 Yes No
 Did you receive a waiver? Yes No
 (Please enclose 2 copies of the waiver letter.)

Section III – Complete the following if you are in the U.S.

Date of Last Arrival (mm/dd/yyyy): _____

I-94# (from small white card inside passport): _____

Current nonimmigrant status: (e.g., F-1, J-1, H-1B): _____

Expiration date of current status (mm/dd/yyyy): _____

Current U.S. Address: _____

If your dependent family members are changing to H-4 status or extending H-4 status, give the following information:

Last Name, First Name	Current Status	Expiration date	Relationship to you

Do you and all family members have a valid passport?
 Yes No (please explain)

Note: Dependents must complete Form I-539, Application to Extend/Change Nonimmigrant Status. The form can be downloaded from [wwwhttp://uscis.gov/graphics/formsfee/forms/files/i-539.pdf](http://uscis.gov/graphics/formsfee/forms/files/i-539.pdf)
 The filing fee of \$300 must accompany this form.

Section IV - If you earned a Master's or higher degree from a U.S. institution of higher education, provide the following information

Name of the U.S. institution: _____

Date Degree Awarded (mm/dd/yyyy): _____ Type of U.S. degree: _____

Address of the U.S. institution: _____

DEPARTMENT REQUEST FORM
** must be completed in full **

PLEASE TYPE OR PRINT NEATLY. This information, as presented, will be used on immigration forms.

Name of Prospective H-1B Employee:

(Last) (First) (Middle)

Job Title for H-1B Position: _____

GMU Department: _____

Name and title of employee's immediate supervisor:

Number of people employee will directly supervise: _____none_____

Non-technical Description of Job/Duties:

Work Address : _____

Salary: _____

Salary Range for Classification: _____

H-1B Start Date _____

H-1B End Date _____

Minimum Qualifications needed for anyone to perform this job:
Please list degree, field, and minimum years of experience needed for this position.
DO NOT list the specific qualifications of the individual you wish to hire.

H-1B DEPARTMENT CERTIFICATION FORM

Note: The Immigration Act of 1990 requires the submission of a Labor Condition Application (LCA) to the Department of Labor before submitting the H-1B petition to Citizenship and Immigration Services. Before the Office of International Programs and Services can submit the LCA, you must certify the following statements and complete the required information.

I certify that:

1. The salary being paid to the above named employee is at least the actual wage being paid to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment (regional average), whichever is higher.
2. The fringe benefits offered to this employee are equivalent to that offered to other U.S. workers in the same classification.
3. Employing this person will not adversely affect the working conditions of U.S. workers similarly employed.
4. There is no strike, lockout, or work stoppage due to labor dispute in this occupation.
5. The notice of this filing will be posted in two conspicuous locations within the department for at least 10 consecutive days after receiving it from the Office of International Programs and Services.
6. We agree to comply fully with the terms of the Labor Condition Application stated above for the duration of the alien's employment in H-1B status at GMU.
7. We fully understand that any willful violation connected with providing inaccurate information in the LCA may incur severe penalties that have a long-range impact at GMU.
8. As required by the US Citizenship and Immigration Services, we agree to pay the reasonable cost of return transportation to the alien's home country if s/he is dismissed before the end of the authorized period of H-1B employment. (Explanation on page 5)

Certified by:

Direct Supervisor:

(Name) (Signature) (Date)

Department Chair:

(Name) (Signature) (Date)

Department Contact: _____ **Ext.:** _____

Email: _____

WAGE DETERMINATION WORK SHEET

This worksheet must be completed by the hiring department. This will be kept in OIPS as part of the required Department of Labor public inspection file.

1. Title of position offered to alien: _____
2. Number of other employees in department with this title: _____
3. Total number of other so-titled employees who have similar duties and responsibilities and who have similar education, qualifications and experience for the specific employment: _____
4. Salary of prospective employee: \$_____ per _____
5. Please describe in detail the system used by your department to determine the salary paid to the individual for whom you are requesting H-1B status. Factors to take into consideration may include length, type and breadth of experience, level of skills and specialized knowledge, level/subject area of advanced degrees, job responsibility and function. If your department follows a particular written GMU or state salary schedule or guideline in establishing employee wage rates, please also attach a copy of that schedule.

(signature)

Title and Department

Date

SAMPLE LETTER IN SUPPORT OF H-1B PETITION

U.S. Citizenship and Immigration Services
California Service Center
Attn: H-1B Cap Exempt Processing Unit
24000 Avila Road, Room 2312
Laguna Niguel, CA 92677

RE: Dr./Ms./Mr. Doe's H-1B Petition

To Whom It May Concern:

This letter is submitted in support of the H-1B petition of George Mason University for Dr./Ms./Mr. Doe, who has been hired to serve as a faculty member in the Department of Y on a temporary basis. The intended period of H-1B employment (or the requested extension of H-1B status) is from September 1, 2008 to August 31, 2011.

George Mason University is an innovative and rapidly growing public university located just outside of Washington, DC. The School of Z's Department of Y offers a B.S. degree in Y, as well as the M.S. degree in Y. Our department is particularly interested in developing expertise in XX and YY and has made great progress in these areas in recent years.

Dr. Doe is being offered a full-time position at the level of Assistant Professor. Her responsibilities will include teaching of both undergraduate and graduate courses, as well as conducting research in XX. Because of Dr. Doe's broad background in research and teaching in the area of XX, we believe she will make outstanding contributions to the Department of Y, enhancing George Mason University's reputation as a leader in this area.

Dr. Doe received her Ph.D. from the Institute of Technology in 1995. She was employed as a post-doctoral fellow at _____University for the past three years where she worked closely with leading scientists in the fields of XX and YY. Dr. Doe also taught undergraduate students YY courses and received outstanding evaluations. She has written numerous articles in professional journals and has been cited by other scholars in the field. Dr. Doe has presented her research work at two major conferences in the United States and has been invited to speak at several Canadian and European universities.

We intend to employ Dr. Doe for an initial period of three years in the position offered. She will be compensated at \$_____ per year. This department will bear responsibility for reasonable costs of return transportation abroad of the alien should she be dismissed from employment before the expiration of the H-1B petition. Thank you for your assistance and cooperation in processing this request.

Sincerely,

(Signatures of Dean and Department Chair)