

H-1B INSTRUCTIONS and REQUIREMENTS

For use by MUSC offices in hiring foreign personnel

INTRODUCTION

The internationalization of the Medical University of South Carolina (MUSC) means increased numbers of foreign nationals seeking employment. MUSC's Office of International Support for Faculty, Staff and Students (**International Support**) provides immigration support to the research, education and patient care communities by coordinating and submitting H-1B petitions. This document gives guidance to college administrators, faculty, and staff who are involved in the process of hiring.

ACRONYMS

DO - Designated Official within College or Department for purposes of gaining H-1B status approval for a specified position from the USCIS

DHS - Department of Homeland Security

DOL - Department of Labor

IIT - Intra-Institutional Transfer

LCA - Labor Condition Application

PW - Prevailing Wage

RFE - Request for Evidence

SESA - State Employment Security Agency

USCIS - United States Citizenship and Immigration Services (a DHS agency)

GLOSSARY

Actual Wage: Wage normally paid by the employer to similarly employed individuals with similar experience.

Adjudication: Process by which USCIS reviews an employer's H-1B petition.

Dual Intent: Term used to describe the flexibility with regard to immigrant intent that an H-1B status provides; an H-1B worker is initially employed as a non-immigrant, but later may apply for LPR with the sponsorship of the employer.

Expedited Processing: USCIS adjudication within 15 calendar days, also known as premium processing. Approval is not guaranteed within 15 days.

Hiring Official: Faculty or Staff who creates a MUSC position, determines the actual salary, interviews applicants and decides who is best qualified for the position.

H: Non-immigrant visa that allows an alien into the US temporarily to perform services or labor or to receive training; also, a status used for dependents of these workers.

H-1B: Non-immigrant status granted to the US employer by the US government for the work authorization benefit of a foreign national named by that employer. Employer and employee H-1B are recognized under immigration law as having dual intent.

H-4: Non-immigrant status for dependents of an H-1B employee. If the dependents are in the US, it is established via submission of Form I-539.

I-94: Arrival/Departure Document; a small card stapled into an alien's passport by US Customs and Border Patrol officer to record length of legal status and date of entry.

I-129: Form used by an employer to petition USCIS for H-1B status and the work authorization benefit for their specified foreign national employee.

I-539: Form used by non-immigrant alien inside the US to petition USCIS for an extension of stay or for a change to another non-immigrant status.

Labor Condition Application: Attestation made by the US employer regarding the salary being paid, notice to current employees of the open position, and working conditions of the foreign national – preliminary to filing H-1B petition.

Portability: The ability to transfer the foreign employee H-1B work benefit from one employer to another. Second employer must file I-129 petition.

Premium Processing: USCIS adjudication within 15 calendar days; aka expedited processing.

Prevailing Wage: Determination made by state employment security agency (local branch of DOL) regarding the wage that is typical for any specific position in a geographical location - preliminary requirement to filing the LCA.

Required Wage: Wage that is required by law to be paid to an H-1B beneficiary. It is the higher of either the Prevailing Wage or the Actual Wage.

South Carolina Employment Security Agency: DOL local office that makes prevailing wage determinations.

Specialty Occupation: An occupation in the US that requires a specialized body of knowledge culminating in at least a bachelor's degree, or its equivalent, in the field.

Standard Processing: Four to five month USCIS adjudication of H-1B petitions.

Work Authorization: Permission granted by USCIS to work in the US; it is the “benefit” granted to the H-1B beneficiary.

H-1B PROCESS

See flowchart. The H-1B process impacts issues such as workforce recruitment, hiring procedures, and compensation. Producing the H-1B petition, submitting it, and getting it approved requires close cooperation among International Support, DO, and the foreign national, as outlined below. To be approved, every H-1B petition, including extensions, must prove all of the following:

- A. petitioner (MUSC) is a US entity eligible to be granted H status,
- B. position meets the definition of “specialty occupation” (see Glossary),
- C. foreign national meets the minimum qualifications of the position as specified by the petitioner when creating the position, and
- D. foreign national is eligible to be granted the H-1B work authorization benefit.

Stage I

1. After a position has been established through normal MUSC procedures and foreign candidates have been identified, the DO provides both Form 1 “Position Information” and Form 2 “Actual Wage Memorandum and Worksheet” to International Support (454 MUSC Wellness Center).

NO OFFER OF EMPLOYMENT (no verbal, no written, no unofficial nor otherwise) **WILL BE MADE UNTIL AFTER THE “REQUIRED WAGE” HAS BEEN DETERMINED BY INTERNATIONAL SUPPORT.**

2. Upon receipt of completed Forms 1 and 2, International Support requests a “Prevailing Wage” for the position from the local SESA office with jurisdiction over the location of the employment. Allow 10 business days for determination.

3. International Support contacts DO to discuss timing of H-1B petition, provide advice on the government’s process and to give a general overview of the case and procedures. If he/she is inside the US, the foreign national must visit International Support for instructions on their personal materials to be provided to International Support (educational qualification and immigration related materials).

Stage II

1. Upon determination of the prevailing wage, International Support informs DO of the lawfully Required Wage - the higher of either the Actual Wage or the Prevailing Wage. DO informs hiring official of Required Wage. A business decision is then made regarding whether or not the wage is acceptable and whether to continue the H-1B petition process.

2. If the Required Wage is acceptable to the hiring official, International Support will provide DO via email attachment the 2 Labor Notices to be posted. DO immediately posts in two conspicuous locations around the area of employment for a mandated 10 working days, not including holidays and weekends.

3. International Support files the online Form ETA-9035 Labor Condition Application (LCA) with the US Department of Labor (DOL).

4. Upon removal of the two labor postings after 10 business days, DO forwards both of those copies to International Support and makes official, written offer of employment from MUSC hiring official using the lawfully Required Wage. DO also provides to International Support the H-1B Letter of Duties, Responsibilities and Qualifications addressed to USCIS California Service Center.

Stage III

1. DO provides to International Support a copy of the offer which has been accepted (signed) by the foreign worker along with the completed Form 3, check(s) payable to DHS, an IIT to International Support for \$100 and other required supporting documents (click here to see “Required Documents” on Flowchart).

2. International Support completes and submits to USCIS the I-129 Petition For a Nonimmigrant Worker on behalf of the MUSC hiring official.

3. USCIS notifies International Support of H-1B status approval, denial or request for additional information. International Support immediately notifies DO of petition status.

H-1B PETITION CHECKLIST

- As soon as you know a position will be filled by a foreign national who needs the H-1B work benefit, accurately and completely fill out **Form 1 Position Information** based only upon a MUSC HR or College Business Office approved job description. Remember to enter only information related to the position itself without regard to the aliens' qualifications to fill the position.
- Accurately determine Actual Wages of similarly employed individuals within the department or division of employment. Complete **Form 2 Actual Wage Worksheet and Memorandum to the US Department of Labor (DOL) Labor Condition Application (LCA) file**. Sign and date the forms.
- Send both completed forms** to 454 Harper Student Center (International Support office), **along with a copy of the official documentation which was submitted to HR or College Business Office to get the position approved**. International Support will use this information to request the "prevailing wage and then determine the "required wage" which must be paid to the alien beneficiary.
- Provide Form 3 Data Sheet** to the prospective H-1B beneficiary.
- Upon receipt from International Support, **post the LCA filing notice in two conspicuous locations within the area of employment for not less than 10 consecutive business days not including holidays and weekends**. This notice contains the "required wage" which must be paid a foreign national for whom MUSC is applying for the H-1B work benefit.
- During the posting period, if an inquiry is made by an American worker who is interested in applying for the position **you must contact HR to reopen the position and allow that person to apply**. If that applicant is then not chosen to fill the position, **document what are the legitimate business factors which make the alien more qualified (without respect to the time the alien beneficiary may have held the position) sign and date** that documentation and provide the original document to International Support for our DOL inspection file.
- After 10 days labor notice posting, **provide an official job offer letter** to the alien beneficiary which offers the "required wage" as reflected on the labor notices. Obtain the alien's signature on the offer letter.
- Upon removal of the two labor notices, **sign, date and return both copies to International Support to be added to the DOL file**.

- Require your beneficiary to contact International Support** in order that he/she bring the completed Form 3, a copy of his/her signed offer letter, all of his/her educational material which qualifies him/her to fill the position, and their immigration records (passport, Form I-94 and Forms I-20 or DS-2019's). **If the alien is not inside the US, only provide to International Support a copy of their passport identity page and passport expiration date. There is no need for the alien who is not inside the US to contact International Support.**

- Request a check made payable to the US Department of Homeland Security (California Service Center)** in the amount of \$320. If this is a new petition, request a second check in the amount of \$500. If expedited processing is necessary, request a third check in the amount of \$1000.

- Create a letter of support** addressed to the California Service Center. See sample letter on website. Send letter of support and check(s) to International Support office.

- Upon written notification from International Support of the USCIS adjudicative decision of your petition, **require your beneficiary to report to International Support with their passport.** If the petition is approved, the beneficiary will be provided the new Form I-94 which is evidence of their extended authorized period of stay pursuant to the USCIS approved MUSC petition for H-1B status granted for the specific position.

- If the alien beneficiary is not inside the US,** International Support will supply you with a copy of the entire petition and the original Notice of Action (Approval Notice) for you to provide the alien to use in applying for the H-1B visa at the US Embassy or Consulate nearest their home.

- Upon notification of the USCIS approved petition, make no changes to the position** (duties, title, salary, etc., as was described in our H-1B petition) during the entire period of employment as approved by USCIS without first contacting MUSC's International Support office. A new petition to USCIS could be required to be submitted in order to obtain the beneficiary's lawful work authorization.

NOTE:

ANY CHANGE IN THE ALIEN'S EMPLOYMENT MUST BE REPORTED PRIOR TO MAKING THE CHANGE. THIS INCLUDES MATTERS OF CHANGING LABS OR DEPARTMENTS, ALL CHANGES IN TITLE OR SALARY, CHANGES IN HOURS, JOB DUTIES AND ANY OTHER POSSIBLE CHANGE TO THE EMPLOYMENT. FAILURE TO DO SO BY THE EMPLOYING MUSC DEPARTMENT MAY RESULT IN SIGNIFICANT LEGAL PROBLEMS FOR THE DEPARTMENT AND/OR THE ALIEN WORKER.