

H-1B Employee Information

INTRODUCTION

H-1B Employee Information is required reading for employees who are authorized employment at the Medical University of South Carolina (MUSC) under H-1B status **or** those employees who will be changing their work authorization to H-1B beneficiary, i.e. changing from the F-1 student Optional Practical Training work benefit to H-1B employee work benefit. Not all cases are identical and it is impossible to address each employee's individual situation here. If you have questions that are not answered by the following information, please contact MUSC's Office of International Support for Faculty, Staff and Students (International Support) in SS454 Harper Student Center.

You are the specified beneficiary on your employer's petition to the US Government requesting permission for you to remain in the US; therefore, you have legal obligations to both your employer and to the government. The following information will assist you in understanding your obligations related to your legal status such as notices to the government of changes to your address while in H-1B status. You are required to maintain legal "dependent" status for your spouse and children. Information contained herein will assist you with that requirement.

Plan ahead. Do not wait until the last minute to communicate with International Support about your situation. We are here to assist you but cannot offer proper advice or assistance unless we know you are in need.

THE BASICS

H-1B status allows employers to hire a qualifying foreign national (H-1B beneficiary) temporarily in a certain type of employment position called a "specialty occupation". A foreign employee cannot apply for the H-1B status. The employer is responsible for petitioning the US Citizenship and Immigration Services (USCIS) to obtain permission to hire a particular foreign national to fill a position which requires at least a bachelor's degree, or its equivalent, in the field. The H-1B status is employer-specific and job-specific. The H-1B benefit for a foreign employee is generally a maximum of 6 years duration (granted in increments of up to 3 years each).

NOTICE OF ACTION (Form I-797)

Form I-797 Notice of Action is a one-page legal document sent to the employer when its petition for an H-1B status has been adjudicated. If the employee is already in the US and the employer is requesting a change of status and/or extension of stay for the foreign employee, a new Form I-94 Departure record is attached to the Form I-797 which reflects the following information:

1. Petitioning employer (MUSC)
2. Legal benefit status in the section titled "Class" (H-1B)

3. Period of the employer's approved H-1B status and employee's work benefit
4. Name, date of birth and citizenship of employee (H-1B beneficiary)

At MUSC, a copy of the Notice of Approval is given to the employee by International Support. The employee must present a copy of Form I-797 when completing an I-9 form for payroll. The original Form I-797 will be provided to the employee to be used as evidence of nonimmigrant status for travel purposes as needed (presenting to US embassy and/or border officials).

H-1B BENEFICIARY STATUS (Form I-94)

H-1B beneficiary status is documented on Form I-94 Departure Record. The status can be obtained by an employee who comes to the US in another nonimmigrant status (such as F-1, J-1) and subsequently is approved for a "change of status" to H-1B beneficiary, or by presenting a valid H-1B visa and Form I-797 Notice of Approval and is granted H-1B beneficiary status by a US Customs and Border Patrol agent at a US port of entry (see next paragraph). The H-1B employee may remain in the US as long as he or she maintains the specified employment with the employer who petitioned for the H-1B status or until the expiration date of H-1B as shown on Form I-797 Notice of Action (issued to the employer) and Form I-94 Departure Record (issued to the employee). The employee may continue to reside and work in the US for the petitioning employer following expiration of the H-1B visa as long as his/her H-1B status has not expired.

THE H-1B VISA

In order for a foreign national employee to be granted H-1B status upon entry to the US, the employee (applicant for admission into the US) must present a valid passport which contains a valid H-1B visa, and Form I-797 Notice of Approval. To obtain an H-1B visa in his/her passport, a foreign national must present to a US consulate abroad the I-797 Notice of Approval issued to the employer and copy of the I-129 Petition for a Nonimmigrant Worker submitted to USCIS by the employer. Employees who will come to their H-1B job from outside the US can enter the country no more than 10 days before the beginning date listed on the Notice of Approval (I-797). See <http://www.travel.state.gov/> for information on US embassies, wait times for appointments and preparing for visa interviews. H-1B status allows for "dual intent" inside the US. Dual intent refers to the intent to maintain a nonimmigrant status inside the US at the same time as intending to apply for an immigrant status/visa (Lawful Permanent Resident – LPR - status).

1. A US consular officer will not deny an H-1B visa because the employee appears to have applied for LPR, also called a "green card" (immigrant intent).
2. A person with H-1B status can apply for Lawful Permanent Residency (immigrant status) while holding H-1B visa.
3. A person applying for an H-1B visa at a US Consulate is not required to prove intent to return to their home country (nonimmigrant intent).

CHANGE OF IMMIGRATION STATUS WHILE INSIDE THE U.S.

Employees already in the US on a nonimmigrant status other than H-1B may be able to change status to H-1B beneficiary. International Support will consult with the academic department and the employee about issues affecting the eligibility of the new employee to change status. Departments/employees should consult closely with International Support about the timing of the change of status, about the job start date and about any travel outside of the US during this period. International Support must consult with the department about factors such as:

1. Whether the employee is subject to the J-1 two year foreign residence requirement,
2. Whether the employee is currently working at MUSC, and if so, whether the job duties will remain the same, and
3. Whether the employee has maintained legal status

CHANGES TO YOUR JOB DUTIES

An approved H-1B employer must submit an amended H-1B petition to USCIS when an employee's position undergoes a material change (e.g. duties, title, salary, change of department). **You must notify International Support of any change to your job duties. International Support will determine if the changes are considered "substantial" enough to require an "amended" petition be submitted to USCIS.**

EXTENSION OF STAY IN THE U.S.

Departments can request extension of H-1B status for a current position if the duties remain the same and the employee has not used the full 6 years of available H-1B benefit. For payroll purposes, if MUSC has filed a timely application for an extension of status, the employee is authorized to continue employment for a period not to exceed 240 days beginning on the date of expiration of the previously authorized period of status. When the approval notice is received, we will notify the department contact person that your Form I-94 is ready for pickup. The employee will then need to bring their passport to receive the I-94.

H-4 DEPENDENTS

Once an employee has been granted H-1B status, his/her spouse and children (under 21) will normally be eligible for H-4 status. **If the employee and dependents are in the US,** dependents may apply for a change to H-4 status. After the H-1B application process has been initiated by the department, the employee will send a completed Form I-539 Application to Change or Extend Non-immigrant Status. The USCIS filing fee (paid by the employee) and supporting documents should be submitted to International Support.

If your dependents are outside the US, MUSC does not need to include any information about them in the petition. After the H-1B petition has been approved, your dependents may apply for H-4 visas at the US Consulate. Dependents should present a valid passport and proof of their relationship to you such as marriage certificate (for spouse) or birth certificate (for children). Persons in the US with H-4 status may not be employed in the US, but they are allowed to attend school.

H-1B REGULATIONS & POLICIES

Travel outside the U.S.

A new or continuing H-1B employee should not travel outside of the US while the petition is being processed, without first consulting International Support. Generally, you need a valid, unexpired H-1B entry visa in your passport for entry into the US. A visa is a stamp in your passport, which you obtain from a US Consulate outside the United States. Renewals of the H-1B entry visas are not possible inside the United States.

If any changes to your employment have occurred since your H-1B benefit was approved, contact International Support to discuss whether those changes will affect your visa application. Significant changes could be: changes in job title, full-time to part-time, changes in employing department, changes in job duties, etc.

Security Advisory Opinions – In the post-9/11 world, security is a primary concern of the US Consular officers. Consulates have access to a variety of databases such as criminal activity, terrorism watch lists, etc. If you have had any problems with police in the US, such as convictions of crimes or arrests, these can disrupt a return to the US and you should contact an immigration attorney for advice **before** leaving the US. The visa issuance process requires special scrutiny for people from Iran, Iraq, Libya, Syria, Sudan, North Korea, and Cuba, causing delays. People who have common names may experience delays caused by matching a name in one of the databases used for screening.

If you work with sensitive technology – i.e. technology with application to both military and civilian purposes, be cautious about travel. If you work with sensitive technology, you should carry a letter from your faculty supervisor, which explains, in layman's (nontechnical) terms:

The nature of the research – what is the aim of the research?

Where does the research funding come from?

To what extent is the research already in the public domain?

This type of letter will not avoid a security review but will be useful to the agencies conducting the review and can help speed the visa process. Some of these clearances have been known to delay return of employees for as long as a year.

Change of Address Requirements

Persons in H-1B beneficiary status must notify USCIS of all changes in their residential address. This notification must be done by filing Form AR-11 directly with USCIS. Please go to <http://www.uscis.gov/> to download the form.

H-1B Grace Period

There is no official “grace period” for H-1B beneficiary status after their period of authorized stay in the US ends. USCIS has the discretion to give an unofficial grace period of 10 days but this can never be anticipated. The H-1B beneficiary should apply for change of status prior to employment termination or plan to depart the US immediately at the end of their employment (authorized period of stay).

Departure from MUSC

University departments and/or foreign employees must notify International Support when the employee (H-1B beneficiary) leaves their job and/or departs the U.S., especially if the job termination occurs before the ending date of the approved H-1B status. However, as a practical matter of your immigration history in the US, it is in your best interest to inform International Support of your departure.