UCI International Center

H-1B Workshop for Department Personnel

March 2016
Overview

• What is H-1B visa status
• UCI Policy regarding H-1B petitions
• Starting the H-1B process and what documents are needed
• Department and Employee responsibilities
The International Center’s Role in Immigration Compliance

Compliance

Systems and Procedures

Advising International Population

Training and Advising Campus Partners

Reporting and Record Keeping

Immigration Benefit Processing

UCI International Center
2014-2015

• Researchers, Faculty & Staff
  Total: 1,190
  J-1: 1,042
  H-1B: 128
  Other: 20

• Students
  Total: 5,647
  Undergrad: 3,315
  Graduate: 1,358
  OPT: 591
  EAP: 109
What is H-1B?

Specifically H-1B Specialty Occupation

• A nonimmigrant visa status that allows a nonimmigrant to work temporarily for a specific employer in a “specialty occupation”

• Employment-based (professional occupations only)

• Minimum requirement: baccalaureate or higher degree, or its equivalent

• The field of the degree must be related to the position
What is H-1B? continued

• Employer specific

  • Each of the UC campuses is a separate employer

• Status can be held for a combined total period of 6 years

  • Extensions beyond 6 years allowed under special circumstances (applies to permanent resident (PR) applicants in certain situations and recapture cases)
What is H-1B? continued

• Can’t be subject to any bar, such as 212(e) 2-year home residency requirement
  
  • If subject to 212(e) 2-year home residency requirement, must obtain a waiver or remain in home country for 2 years before UCI can file H-1B petition to USCIS

• Employees must be paid “prevailing wage” or “actual wage”, whichever is higher

• Some dependents (H-4 status) are eligible to work (new effective 5/26/2015)
What is H-1B?  continued

Quiz #1
(Degree), (UCLA), (Recapture)
Questions?
UCI Policy regarding H-1B petitions

• See http://www.policies.uci.edu/policies/procs/718.html

• For an H-1B involving a physician, or an exception to UCI policy academic case, standard practice to utilize outside counsel

  • Contact is Jennifer Henry, Academic Employee Relations Analyst, Academic Personnel Office at UCI

• UCI is not able to sponsor, for H-1B visas, physicians who are graduates of foreign medical schools (FMG’s) and wish to engage in medical training (ECFMG J-1 must be used)
• In general, at least 9 months are required for UCI and USCIS processing and approval of an H-1B visa petition

• Positions eligible for H-1B sponsorship must be 100% supported (full-time positions), with benefits. The position and requested H-1B must have a duration of at least 1 year (H-1B can be requested for up to 3 years at a time)
UCI Policy regarding H-1B petitions

continued

• Teaching and/or research academic appointments

• Directly related to research or teaching appointments (HR staff titles such as Statisticians, SRA II or higher, etc.)

• “Employee-Employer relationship”
• **Premium processing** is an optional fee of $1,225 that USCIS charges to expedite petition adjudication in 2-3 weeks. Without this fee, the time for adjudicating petitions is variable and is currently taking approximately 6+ months. Upgrading to premium processing can be done at any time with payment of the above fee. Therefore, if the department chooses not to use premium processing, it may become necessary later, if delays occur in filing the petition or if the petition is still pending close to the H-1B start date or if international travel plans indicate a need for the employee to leave the US urgently.
UCI Policy regarding H-1B petitions
continued

• At UCI, the J-1 visa primarily is used for Research and Teaching positions, with some exceptions

  • $1,200 IC fee for bypassing the J-1
  • H-1B should be used for tenure-track positions
  • For comparison of J-1 vs H-1B, please see http://www.ic.uci.edu/Forms/bypassJ1toH1B.pdf

• Other options:

  • EAD (pending PR, J-2, ...)
  • PR
  • O-1 (extraordinary ability in the sciences, arts, education, business or athletics)
  • TN
  • E-3
• Overview H-1B Temporary Worker Classification
  
  • [http://www.ic.uci.edu/Forms/OverviewH-1BTempWorkerClassification.pdf](http://www.ic.uci.edu/Forms/OverviewH-1BTempWorkerClassification.pdf)
UCI Policy regarding PR

PR (Permanent Residency):

• If UCI sponsored, outside counsel prepares and files PR cases for regular rank, permanent (long-term) academic appointees and certain categories of researchers:
  • Labor Certification
  • Outstanding Professors/Researchers
  • Postdocs are generally not included

• Contact is Jennifer Henry, Academic Employee Relations Analyst, Academic Personnel Office at UCI

• See http://ap.uci.edu/Policy/permres.html
Quiz #2

(Canadian doctor), (New Postdoc from China)
Questions?
H-1B process

• For UCI Departments interested in pursuing an H-1B petition for a qualified individual for a particular position, please contact Simon Jarusauskas, International Scholar Specialist at the International Center, 949.824.8025, or email: sjarusau@uci.edu

• Visit http://www.ic.uci.edu/UCIDepartments/h1forms.php

• Ask Simon for an H-1B start package email
Duties for Researchers:

Wrong Way: This is not a detailed description of the job duties

- The position involves the study of mechanical properties of structural materials. He has done research with modeling and simulations and developing a range of models in his previous position. He is extremely well-qualified for this research which will lead to a deeper understanding of radiation-resistant materials.
Duties for Researchers:

Correct Version: Starts with general topic, followed by details

- Conduct research in the area of bone regeneration; design, plan, perform and interpret experiments aimed at developing a device used to regenerate bone in human patients; optimize the combination of a biocompatible scaffold, bone growth factor and patient-derived stem cells, using cell culture and experiments in rodents; present research results at scientific meetings and conferences; provide guidance to other researchers, undergraduate and graduate students; prepare papers for publication in professional journals.
Duties for Faculty:

- Teach courses in civil and environmental engineering; conduct research in civil and environmental engineering, particularly in the area of materials engineering and ceramics; advise students; serve on departmental committees
H-1B Documents needed

• Normal H-1B processing time at IC, after all and complete documents listed in the H-1B start package are received by IC from department, is 2-4 months.

• Regular processing time for adjudicating H-1B petitions at USCIS (once the H-1B petition is received by USCIS) is variable and is currently taking approximately 6+ months.

• IC recommends to provide all necessary and complete documents for the H-1B request at least 9 months prior to the requested H-1B start date.

• The LCA with DOL can’t be certified earlier than 6 months prior to the requested H-1B start date.

• Premium processing at USCIS is recommended for any H-1B case request that is submitted to IC less than 9 months prior to the requested H-1B start date, to allow IC to obtain the approval notice in a timely manner before the anticipated H-1B start date.
COE/Extensions:

- When an extension of H-1B status/change of employer request has been filed with USCIS in a timely manner, and is pending adjudication, departments may extend the individual’s employment authorization on payroll for 240 days beyond the expiration date of the individual’s current H-1B status, as provided for in immigration regulations. This provision is known as the “240-day rule”. The petition has been filed in a timely manner when it has been submitted and received by the USCIS before the individual’s H-1B status expires. The premium processing at USCIS for those cases is optional and not required for the employment purposes.

- Employee should not complete employment with the current employer (including continue to be paid) until the anticipated start date and until the UCI petition is filed. We should be able to exercise the H-1B portability provision of the current AC21 law, which means, the employee can commence employment with UCI based upon confirmation that the H-1B petition was filed and received by USCIS. Premium processing at USCIS is optional and is not required for the employment purposes.
H-1B Documents needed

- UCI Department request for H-1B petition Form A (please have prospective employee complete the form):
  - [http://www.ic.uci.edu/Forms/DepartmentRequestforH-1BPetitionFormA.pdf](http://www.ic.uci.edu/Forms/DepartmentRequestforH-1BPetitionFormA.pdf)
H-1B Documents needed continued

• Prevailing Wage Request Form Information Sheet
  • [http://www.ic.uci.edu/Forms/PrevailingWageRequestFormInformationSheet.pdf](http://www.ic.uci.edu/Forms/PrevailingWageRequestFormInformationSheet.pdf)

• Prevailing wage Determination Form 9141 draft
  • [http://www.ic.uci.edu/Forms/ETAFORM9141.pdf](http://www.ic.uci.edu/Forms/ETAFORM9141.pdf)

• I-129 Deemed Export control Questionnaire/Certification
H-1B Documents needed

• Copy of the Job Ad posted for the position

• Copy of the Appropriate Salary Scale for the position

• Copy of AP-21/AP-PX1 (or other) and Appointment/Offer letter (if applicable)

• $500 Recharge form for IC H-1B services
  - [Link to Recharge Form](http://www.ic.uci.edu/Forms/RechargeFormforJ-1andH-1B.pdf)
H-1B Documents needed

• UC Irvine Addendum to the H-1B petition (Form E)
  • [http://www.ic.uci.edu/Forms/AddendumtoH1BPetitionsFormE.pdf](http://www.ic.uci.edu/Forms/AddendumtoH1BPetitionsFormE.pdf) (please email a copy of the draft first)

• NIFLCA Form D
  • [http://www.ic.uci.edu/Forms/NoticeofIntenttoFileaLaborConditionApplication.pdf](http://www.ic.uci.edu/Forms/NoticeofIntenttoFileaLaborConditionApplication.pdf) (please email a draft copy to me first, before posting)

• Two signed original hardcopy letters from employer
  • [http://www.ic.uci.edu/Forms/H1BStatusSampleLetterfromDeptChair.pdf](http://www.ic.uci.edu/Forms/H1BStatusSampleLetterfromDeptChair.pdf) (please email a copy of the draft letter for review first)
• Fee checks payable to U.S. DEPARTMENT OF HOMELAND SECURITY ($325, $500, $1225 (if premium processing needed) and $290 (if any dependents))

  • Need separate checks, make sure checks get delivered to IC and are not sent to DHS
  • Department must pay all the fees, except dependent fee

• FedEx label to USCIS California Service Center, addressed: U.S. Citizenship and Immigration Services, California Service Center, ATTN: CAP EXEMPT H-1B Processing Unit, 24000 Avila Road, 2nd Floor, Room 2312, Laguna Niguel, CA 92677; Phone # - 949-389-3007.
H-1B Documents needed continued

From employee:

- Curriculum vitae, current

- Copy of degree certificate(s)
  - Transcripts, if field of study is not listed on the certificate/ diploma
  - If not a US degree, need translation in English with a certification of translator form
  - Credentials evaluation, if not a US degree

- Documents showing current and past immigration status in the US (if applicable - every previously-issued I-20, EAD, DS-2019, and/or H-1B/H-4 approval notice; All current and previous Passport pages; Visa stamps; and, most recent Form I-94 printout or if paper card, front and back)

- If there are any dependent(s) and H-4 status will be needed to obtain in the US, Form I-539 and supporting documents
EAD

U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

EMPLOYMENT AUTHORIZATION CARD

The person identified is authorized to work in the U.S. for the validity of this card.

NAME Joe Bruin

A# 321687555
CARD # SRC05658333
Birthdate 04/07/1970
Gender M
Country of Birth United Kingdom
Terms and Conditions None
Not valid for reentry to U.S.
Card valid from 08/19/05 expires 08/18/06
The Department of State, based upon a 'no objection' statement from the government of [recorded country], has recommended that you and any부터가인 종료 or your immediate family be accorded a relief of the legal or foreign residence requirements of section 245 of the Immigration and Nationality Act, as amended. This recommendation only refers to the removal of the legal or foreign residence requirements and does not address any other conditions of your status or your ability to remain in the United States.

Accompanying, upon consideration of the evidence of record, and on the basis of the recommendation of the Department of State, you and any members of your immediate family are hereby released from the legal or foreign residence requirements of section 245 of the Act.

Please note that if any member of your immediate family has incurred an obligation to depart the United States, pursuant to the Law, the notice herein shall also be directed to such member. Each family member will need to depart the United States and then return to the United States at his or her own expense.

This completes our action on this application. The basis of this recommendation is additional information. If you have any further questions, please call your local Immigration office.

This form is NOT A VISA AND MAY BE USED FOR PURPOSES OF A YEAR.
THE REGENTS OF THE

University of California

ON THE NOMINATION OF THE FACULTY OF THE COLLEGE OF LETTERS AND SCIENCE HAVE CONFERRED UPON

JOE BRUIN

THE DEGREE OF BACHELOR OF ARTS WITH A MAJOR IN MECHANICAL ENGINEERING WITH ALL THE RIGHTS AND PRIVILEGES THEREunto PERTAINING

GIVEN AT BERKELEY THIS TWENTY-FOURTH DAY OF MAY IN THE YEAR TWO THOUSAND AND THREE

[Signatures]

Governor of California and President of the Regents

President of the University

Chancellor at Berkeley

Executive Dean of the College
Department Responsibility:

When to take someone off payroll (leave w/o pay):

- Individuals holding F-1 Optional Practical Training (OPT) status must be taken off payroll when their OPT EAD expires and the requested change to H-1B status is still pending approval.

- Individuals holding J-1 status must be taken off payroll when their Form DS-2019 expires and the requested change to H-1B status is still pending approval.

- Individuals cannot work during the F-1 (60-day) and J-1 (30-day) grace periods.
Department Responsibility:

**Must inform IC:**

- **Any** changes with H-1B holder’s employment **before** the effective date of the change:
  - Duties, title, work location, department, less than full-time, etc.
  - Possible H-1B amendment if “material change”
- LOA
- Sabbatical
- Termination of employment
- Resignation
- Other

UCI International Center
USCIS Site Visits:

• USCIS makes visits to employer sites to check on H-1B employees and to verify compliance with the terms and conditions of the H-1B program.

• The site investigator typically requests information such as confirmation that an H-1B employee is employed by the University, job title, salary paid, number of hours worked, job location, and job duties...

• It is very important that you inform IC of any change in the employment of an H-1B employee at all times, even if it seems like a very small change.
What you need to know before your employee (foreign national) travels abroad

If your employee must apply for an H-1B visa before she/he can return to the U.S., please be aware of the following:

• There is always a risk of a delay in the issuance of the visa by the U.S. Embassy/Consulate, causing the individual to be “stuck abroad”.

• The delay can be from a few weeks to a few months.

• Reason for the “administrative delay” can be any of the following, or a combination of factors: (1) a need for background check for security reasons; (2) individual’s expertise is on the Technology Alert List; or (3) export control compliance concerns.
Employee Responsibility:

• Statement by the H-1B holder:

• If leaving UCI:
  • Departure form - [http://www.ic.uci.edu/Forms/ScholarDeparture.pdf](http://www.ic.uci.edu/Forms/ScholarDeparture.pdf)
Need to Know:

• Benefits of J-1 Exchange Visitor Status compared to H-1B
• H-1B has no “grace period”
• H-1B visa delays because of security checks by government agencies. The delay may be from a few weeks to several months
• Department’s liability to pay for a return flight ticket
• H-1B must be withdrawn/amended if employment conditions changed
• USCIS Site Visits
• Contact IC for questions

We are one team, UCI 😊
Ongoing Programs for Scholars and Their Families

- International Coffee Hour: Fridays, 10:30am – 12:00pm
- Quarterly Scholar Social
- American Culture Through Conversation
- English Development Workshop Series
- Life in the U.S. Workshop Series
- Annual International Center Welcome Picnic
Questions?