



Overview of Obtaining H-1B Status for Faculty and Staff

Administered By: Office of Human Resources

Approved by:

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When necessary, St. Bonaventure University supports H-1B sponsorship for foreign faculty and staff members. Decisions on whether to proceed with H-1B sponsorship for a faculty or staff member are made by the individual's area Vice President in conjunction with Vice President of Finance and Administration, Chief Human Resources Officer and SBU's Immigration Counsel.

Eligibility

The H-1B visa category is a temporary worker classification that is limited to qualified foreign nationals seeking to fill positions that are considered "specialty occupations". Under applicable law, a "specialty occupation" is defined as an occupation that requires:

- theoretical and practical application of a body of highly specialized knowledge; and
- attainment of a bachelor's degree or higher degree (or its equivalent) in the specialty area as a minimum for entry into the occupation in the United States.

Procedure guidelines

Prior to engaging in any discussion of offers and/or extending any offers:

- For faculty: search committees will notify Dean of any final candidates that require a visa sponsorship. Dean will then notify Human Resources of any final candidates requiring visa sponsorship.
- For staff: search committees will notify Human Resources of any final candidates requiring visa sponsorship.
- Human Resources will alert Vice President of Finance and Chief Human Resource Officer to discuss feasibility of hiring a foreign national.
- If approved by CHRO and VP Finance, Human Resources will consult with immigration attorney to review candidate's body of application materials to determine eligibility. If determined ineligible, the candidate will have to be deselected. If determined eligible, HR will notify the dean or department supervisor that the search committee may proceed with interview process.

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Length of Stay in H-1B Status

Under the H-1B category, a foreign national is usually granted an initial 3-year period of admission. The H-1B status can be extended for an additional 3-year period. The total period of stay in H-1B category cannot exceed 6 years (unless the permanent residence process has been started for the foreign national in a timely manner).

Generally, any time the foreign national spends outside of the U.S. during this 6-year period can be “recaptured” and used to extend their H-1B status. Accordingly, foreign national faculty and staff should maintain detailed records and documentation of time spent outside the U.S. while holding H-1B status. These records may be important in connection with future H-1B extension requests, if applicable.

Key Steps for the H-1B Process

Offer & Acceptance

The H-1B sponsorship process will not begin until SBU has made a qualified candidate an offer of employment / academic appointment, and the candidate has accepted the offer / appointment. The candidate will also be asked to sign a liquidated damages agreement in accordance with this policy (see “Liquidated Damages” below). Once SBU has the signed acceptance letter and signed liquidated damages agreement in hand, the area Vice President or Dean will reach out to Human Resources to initiate the H-1B process.

Information Gathering

The H-1B petition process begins with information gathering. Once Human Resources has been notified that a foreign national candidate has accepted a position at SBU, Human Resources will take the following steps:

1. Gather biographic and personal information about the prospective employee (and dependents, if applicable) as well as certain documents (*i.e.*, passport, educational degrees, current visas, etc.) that are needed to prepare the H-1B petition.
2. Obtain a copy of the signed acceptance letter and relevant details regarding the position to be held by the H-1B employee including, but not limited to, a copy of the job description and/or advertisement language used during the search process, salary and benefits information, and any other details relevant to the position.

Preparing and Filing the H-1B Petition

Standard Cases: Once all the above-referenced items have been gathered, Human Resources will provide the information package to Immigration Counsel who will prepare the H-1B petition. The final H-1B petition will be filed with the U.S. Citizenship and Immigration Services (USCIS) typically within 4 weeks after all the requested information has been provided by SBU.

Time Sensitive Cases: In time sensitive cases, an H-1B petition may be prepared and filed with the USCIS within 7 to 10 business days after all the required information has been provided by SBU.

Timing Considerations: Please allow *plenty* of time for SBU and Immigration Counsel to prepare and file the H-1B petition. The timeframes referenced above are simply estimates. Delays may occur due to incomplete or incorrect information, changes to the proposed terms of employment, heavy case volume, system or technical errors, holiday closures, vacations, etc.

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H-1B Petition Processing by USCIS

Once the H-1B petition has been filed with USCIS, it may take upwards of 5 months for USCIS to issue a determination on a case that has been filed using the regular processing option. In some cases (and for an additional \$2,500 filing fee), SBU may opt to file an H-1B petition using USCIS' premium processing service. In those instances where a case has been filed using premium processing, USCIS will issue a response within 15 calendar days. The response may be one of the following: (i) an approval; (ii) a denial; or (iii) a request for additional evidence.

Once the petition has been approved, USCIS will issue an H-1B Approval Notice. Upon receipt, Immigration Counsel will forward the original H-1B Approval Notice to Human Resources. Human Resources will, in turn, provide the original H-1B Approval Notice to the prospective employee if he/she is inside the United States.

****Note:** An H-1B Approval Notice *is not* a travel visa. Individuals seeking to travel outside of, and return to, the United States while in H-1B status will need to obtain an H travel visa from a U.S. Consulate or Embassy (preferably in his/her home country). Please reach out to Human Resources for additional information and guidance on how to obtain an H travel visa.

If the prospective employee is outside the United States when USCIS approves the H-1B petition, the individual will need to proceed with "consular processing" in order to obtain H-1B visa status. Consular processing requires the prospective employee to schedule an appointment at a U.S. Consulate or Embassy and appear in person for an interview in order to obtain a visa that will enable the individual to physically enter the United States in H-1B status. The availability of visa appointments and the visa processing times can fluctuate greatly (*i.e.*, days, weeks, months) depending upon the specific U.S. Consulate or Embassy, the time of year, etc.

****Note:** If there is a possibility that consular processing may be needed as part of the H-1B petition process, please advise Human Resources as soon as the possibility arises.

Amendments & Extensions of H-1B Status

Amendments: The H-1B visa category is both employer and position specific. Once an H-1B Petition has been approved, the employee is only authorized to work for SBU and only in the position and geographic location(s) specifically identified in the H-1B Petition that was filed with USCIS. Any material or significant changes to the terms and conditions of the employee's employment (*i.e.*, change in job duties, change from part-time to full-time status (or vice versa), change in geographic location where work will be performed, etc.) will require SBU to file an amended petition with USCIS *in advance of any such changes*. Please contact Human Resources if any material or significant changes to H-1B employment are anticipated.

Extensions: As noted above, a foreign national is usually granted an initial 3-year period of admission. However, H-1B status can be extended, so long as the maximum total time

that the individual is in H-1B status does not exceed 6 years. If an extension of H-1B status is needed, the area Vice President or Dean should contact Human Resources approximately 6 months before the employee's current H-1B expiration date to initiate the extension process.

Costs of H-1B Visa Process

USCIS Filing Fees: For initial H-1B visa petition filings, there is a base filing fee of \$460.00, plus a \$500.00 Fraud Prevention and Detection Fee. The latter fee is not required for amendment or extension applications. SBU will pay these fees on behalf of the employee. If the petition requires premium processing service, there is an additional fee of \$2,500.00. If premium processing is for the benefit of SBU, SBU shall pay the fee. If it is for the benefit of the employee, the cost shall be borne by the employee. If the employee has dependents who need H-4 sponsorship, there is an additional filing fee of \$370.00 plus \$85.00 per dependent to cover biometrics costs. These fees shall be paid by the employee.

Attorney's Fees: In general, attorney's fees for H-1B visa petitions run between \$3,000.00 and \$5,000.00, but could be higher if a request for additional evidence is issued by USCIS. These fees will be paid by SBU, but will be subject to any liquidated damages agreement entered into between SBU and the employee. Attorney's fees for preparation of the H-4 application for dependents of the H-1B employee will be paid by the employee.

Liquidated Damages: In general, H-1B beneficiaries will be asked to sign an agreement detailing liquidated damages to be paid to SBU in the event of the employee's voluntary departure from SBU prior to the end of their H-1B visa status. For instance, the employee will be asked to pay \$10,000.00 in liquidated damages if they leave SBU less than 12 months from the first date of H-1B visa employment, \$7,500.00 if they leave SBU after the first 12 months of H-1B visa employment but prior to the end of 18 months from the first day of H-1B visa employment, and so on and so forth. A liquidated damages agreement will be required for H-1B visa extension petitions as well, unless SBU has initiated the permanent residence process on behalf of the employee.

Other Visa Options

Potential employees may qualify for other nonimmigrant visas including O-1 (individual of extraordinary ability), TN (Canadian and Mexican professionals), and J-1 (e.g., short-term scholar). SBU will decide on a case-by-case basis whether to sponsor potential employees for these nonimmigrant visas.

Miscellaneous

Immigration Counsel: SBU's Immigration Counsel represents SBU only. All immigration related inquiries must be directed to Kyle Leslie in Human Resources or other authorized SBU representative. Employees may not contact SBU's Immigration Counsel directly, unless expressly authorized by Human Resources.