

The H-1B Application Process for Faculty and EPA Nonfaculty- Information for the Hiring UNCG Department

Obtaining approval to employ an H-1B worker is a three-part process requiring the employer to:

- Establish both the prevailing and actual wage for the position;
- File a Labor Condition Application with the US Department of Labor;
- File an H-1B petition with the United States Citizenship and Immigration Services (USCIS).

Filing the H-1B Petition

Once the Labor Condition Application has been certified by the DOL, the employer must file an application with the USCIS as a request for permission to employ the foreign national in H-1B visa classification. The Office of the Provost will compile the petition with information provided by both the hiring department and the foreign national.

Required Information from the Hiring Department:

- A fully completed data collection form;
- A signed copy of the LCA attestation form;
- A completed H-1B Actual Wage Form
- A list of current salaries and position titles of similarly employed individuals
- A detailed copy of the position description including job duties and responsibilities, minimum education and professional requirements and the salary offered;
- A copy of the job advertisement;
- A copy of the job offer letter given to the employee;

Required Information from the Foreign National:

- A fully completed data collection form;
- A copy of the his/her diploma for the highest degree attained, OR,
- Official transcripts which document the awarding of the highest degree attained. **All documents not in English must be accompanied by an official, certified translation.** (In some cases, it may be necessary to have an equivalency evaluation of these credentials done by an outside credentialing agency.);
- Copies of all immigration documents and passport;
- Two copies of his/her most recent curriculum vitae.

USCIS Filing Fees

USCIS imposes fees for filing all immigration-related petitions. As the application is filed by the employer, on behalf of the employee, the hiring department is responsible for the payment of all necessary filing fees which must be submitted with the H-1B petition. This does not include application fees for dependents of the foreign national or premium processing fees when deemed unnecessary. The current fees for an H-1B petition are a \$320 filing fee which applies to all petitions and a \$500 anti-fraud fee which applies to all new petitions (does not apply to extensions).

Premium Processing Fees

USCIS will expedite H-1B petition approval for an additional premium processing fee of \$1000. This fee is in addition to the regular filing fee(s). USCIS promises to respond to the H-1B petition within 15 days of receipt when this additional fee is paid. Normal processing time can take up to four months. If your department is interested in having a new employee begin work within a few months of filing of the petition, please contact the Office of the Provost for more information.

Step-by-Step Procedures

1. Employing department obtains H-1 packet from the Office of the Provost.
2. Department signs the Labor Condition Attestation and completes Data Collection Form and Actual Wage Worksheet and attaches the information requested above, then submits them to the Office of the Provost.
3. The Office of the Provost requests prevailing wage from the Department of Labor, (6 weeks) and if no wage problems, submits a Labor Condition Application (LCA) to the Department of Labor for Approval.
4. The Office of the Provost sends the hiring department and HRS an LCA notice for ten-day posting.
5. Hiring department and HRS post LCA for 10 business days.
6. The hiring department and HRS sign the posting notices to verify that posting has been completed and return them to the Office of the Provost.
7. Hiring department prepares check(s) for USCIS fee(s) made payable to the Department of Homeland Security- \$320, \$500 (for all new petitions), plus \$1000 if premium processing is required.
8. Once the above documentation is collected and the petition prepared, the Office of the Provost sends the completed I-129 packet to USCIS. Form I-539 is required in some cases for dependents. (Preparation and fee for the I-539 is the responsibility of the employee.)
9. USCIS approves application (approximately 3-6 months unless premium processing is requested) and sends approval notice (I-797) to the Office of the Provost.

In the most common scenario, the prospective H-1 is already in the U.S. in another status and applies to USCIS for a change of immigration status. If abroad, USCIS will cable approval to requested U.S. embassy or consulate where he/she will apply for an H-1 visa. Spouse and children may apply for H-4 dependent visas.

Checklist for Documents to be submitted by a UNCG Department to Prepare an H-1B Visa Petition

Please submit the following to:

Jennifer Rauch, Office of the Provost
201 Mossman Building
334-5398

- ✓ A completed Department Data Collection Form
- ✓ A signed Labor Condition Attestation Form
- ✓ A completed H-1B Actual Wage Form with
- ✓ A list of current salary information of similarly employed individuals
- ✓ A detailed position description which includes the job duties and responsibilities, minimum education and professional requirements and salary offered.
- ✓ A copy of any job advertisement you have placed
- ✓ A check for \$320 for the I-129- Petition for a Nonimmigrant Worker
- ✓ A check for \$500 for the anti-fraud fee required for all H-1B petitions*
- ✓ A check for \$1000 for the Premium Processing Fee (if needed)

The check(s) should be addressed to the Department of Homeland Security and should be sent by Accounts Payable to the Provost's Office for submission with the I-129 petition and attachments. Each check must be separate (The fees cannot be combined in one check).

*The anti-fraud fee only applies to new petitions. The \$500 fee is not required for petitions to extend the H-1B status for current employees.

Office of the Provost
UNCG
201 Mossman
Greensboro, NC27402

Phone: (336) 334-5398
Fax: (336) 334-3009
Email: krbrown2@uncg.edu
Website: <http://provost.uncg.edu/immigration>

UNCG DEPARTMENT DATA COLLECTION FORM FOR SUBMISSION OF AN H-1B PETITION TO USCIS
ON BEHALF OF A FOREIGN NATIONAL EMPLOYEE

This form must be completed in full by the UNCG hiring department and returned to the Director of Immigration Services at the address listed above. The information supplied on this form will enable this office to begin the process of filing an H-1B visa petition. Be sure to attach all requested documentation to this application.

UNCG Department _____
(name of department) (campus address and phone)

UNCG Contact Person _____ email: _____

Name of Foreign National _____
Family (Caps) First Middle

Place of Birth _____
(city/province/country)

Sex M _____ F _____ Country of Citizenship _____

Country of Legal Permanent Residency: _____

Current Mailing Address: _____

Phone: _____

E-mail _____ Fax Number _____

Title of Position Being Offered: _____

Salary Offered _____ Per _____

Dates of Initial Employment: From _____ To _____
(Month/Day/Year) (Month/Day/Year)

If in the U.S., Current Immigration Status: F-1 Student _____ J-1 Student _____ J-1 Professor/Researcher _____

H-1B Temporary Worker _____ B-1/B-2 Visitor _____ Other (Please Describe) _____

Please provide a non technical description of the services to be performed: _____

Location where these services will be performed (address): _____

What are the **minimum acceptable qualifications** required to perform the position duties satisfactorily? (Minimum degree requirements, field(s) of study, number of years of experience, etc): _____

Please describe how the foreign national meets these requirements (Academic background, degrees, experience, etc.) _____

Please check all that apply . **This is:**

- _____ a Faculty appointment
- _____ an EPA Nonfaculty appointment
- _____ a permanently-budgeted position
- _____ a grant funded position. Please provide the name of funding source, including US government agency. _____
- _____ a benefits-earning position.

- _____ a full-time position (40 hours per week).
- _____ a part-time position. Number of hours per week _____

This data sheet was prepared by:

Name _____

Title _____ Department _____

Signature _____ Date _____

Current H-1B regulations require that the employer assume responsibility for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment prior to the end of the authorized stay. The University of North Carolina at Greensboro requires that the following Statement of Responsibility be signed by the Department Chair, Dean, or other designated official who is authorized to commit funds in the event that this becomes necessary: (Please read and sign the statement below)

I certify that in the event that the University of North Carolina at Greensboro terminates its employment relationship with:

(name of foreign national)

prior to _____ (end date of employment being requested) funds will be made available for the cost of his/her return transportation abroad, as required by the Immigration Act of 1990. It is my understanding that this responsibility does not apply in the following scenarios: 1) if the alien is dismissed from service for good cause; 2) if the alien violates the terms of his/her visa status; and/or 3) if the alien becomes the beneficiary of another employer's H-1B visa petition.

Name (type or print)

Title

Date

Signature

The Prevailing Wage and the Labor Condition Application

At the heart of the visa H-1B visa petition is the U.S. Department of Labor with its prevailing wage and the Labor Condition Application. Before it can submit an H-1B visa petition to the USCIS, the employer is required to attest to a number of conditions. Failure to follow these procedures, or to abide by the regulations of the Labor Condition Application, subjects the employer to serious consequences, which include:

- fines of \$1000 to \$5000 for each offense;
- payment of back wages,
- prohibition from hiring foreign workers for a year or more.

The employer is also required to maintain substantial documentation that it is in compliance with these regulations and to hold that documentation in a Public Access file which may be audited by the Department of Labor at any time.

"To knowingly and willingly furnish any false information in the preparation of a Labor Condition application, and to aid, abet, or counsel another to do so, is a federal offense, punishable by fine or imprisonment of up to five years."

Therefore, as the Office of the Provost takes responsibility for the preparation, signing, submission, and maintenance of the LCA, and to ensure that all hiring departments are aware of and prepared to comply with all of the federal regulations which govern the H-1B visa, the Chair of the Department or Dean is required to read and sign this document.

The employer must attest to the following on the LCA:

- it will pay the non-immigrant worker at least the local prevailing wage or the employer's actual wage, whichever is higher, and will pay the employee for any non-productive time;
- it will offer the non-immigrant worker benefits on the same basis as U.S. workers;
- it will provide working conditions for non-immigrants which will not adversely affect the working conditions of other similarly employed;
- there is no strike, work stoppage or lock out in the occupational classification at the place of employment;
- it will provide notice to the union or other workers of its intent to hire a non-immigrant worker (The Office of the Provost will forward the necessary notice for the department to post in order to comply with this requirement.);
- it will provide a copy of the LCA to the non-immigrant worker prior to the beginning of his/her employment (This will be done by the Office of the Provost.).

For additional information on the Labor Condition Application and Requirements for Employers Using Nonimmigrants on H-1B Visas In Specialty Occupations, please contact the Office of the Provost or visit the Labor Department web site at:

http://www.dol.gov/dol/allcfr/ETA/Title_20/Part_655/Subpart_H.htm

Labor Condition Application Attestation Form

I have read and understand all of the conditions and regulations associated with the filing of a Labor Condition Application on behalf of my foreign employee and agree to abide by all federal regulations which govern the LCA and the H-1B visa classification. I also confirm that all of the information I have provided to the Office of the Provost is correct and accurate:

- As the hiring department at the University of North Carolina at Greensboro I agree to pay the higher of the actual or prevailing wage for the position;
- I agree to pay the H-1B worker the required wage for non-productive time due to a decision by the employer, or due to the H-1B worker's lack of a permit or license;
- The employment of the H-1B worker will not adversely affect the working conditions of other workers similarly employed and the H-1B worker will be afforded working conditions on the same basis, and in accordance with the same criteria, as is offered to similarly employed US workers;
- The H-1B worker will be offered benefits and eligibility for benefits on the same basis, and in accordance with the same criteria, as offered US workers;
- There is no strike, lock out of work stoppage in the occupational classification at the time of the filing of the LCA. If such a strike, lock out or work stoppage occurs after the application is submitted, I will notify the Office of the Provost within three days to enable them to notify the Department of Labor as required by law;
- Notice to a union bargaining representative of our intent to hire an H-1B worker has been provided; or, if there is no bargaining representative of the position,
- Notice of our intent to hire an H-1B worker has been provided to other workers at the place of employment by posting of the LCA in a prominent place;
- A copy of the LCA will be provided to the H-1B worker prior to the date of employment.

Name of Person with Hiring Authority _____

Title _____ **Department** _____

Signature _____ **Date** _____

Actual Wage Determination Form
(To be kept in Public Access File for H-1B employee)

Explanation of the System Used to Set the Actual Wage

Actual Wage Definition: The range paid to all employees in the department with similar experience and qualifications as the prospective H-1B worker. The H-1B worker will be considered to be receiving the actual wage if his or her salary falls within or above the range of wages currently paid to comparable employees in the same department. Where no other such employees exist at the place of employment, the actual wage shall be the wage paid to the H-1B worker by the University.

This document also includes: **A Summary of Benefits Offered to U.S. Workers in the Same Classification as the H-1B worker, and a Statement Explaining any Differentiation.**

Name of prospective H-1B Employee: _____

Degree held by prospective H-1B Employee: _____

Number of years of relevant post degree experience of prospective H-1B employee: _____

Position title: _____

Salary and FTE: _____

Brief description of job duties: _____

List of all individuals (or id (peoplesoft, etc.) numbers) in Department with same position title as H-1B candidate (both USCs and foreign nationals). Include salary of each. When salary is higher than H-1B candidate, explain why there is a salary differentiation. (**Attach additional sheet if necessary.**)

- 1.
- 2.
- 3.
- 4.
- 5.

Criteria that MAY be used to justify salary differential:

1. Employee has more relevant work experience than prospective H-1B holder
2. Employee has more responsibility than prospective H-1B holder
3. Employee has higher or more relevant educational credentials than prospective H-1B holder
4. Employee does not work same amount of hours as prospective H-1B holder

Criteria that MAY NOT be used to justify salary differential:

1. Employee is funded by different grant than prospective H-1B holder
2. Employee has different area of research than prospective H-1B holder
3. Employee has demanded more salary than prospective H-1B holder
4. University has/had a salary freeze which resulted in a higher pay to non-H-1B holder
5. Insufficient, uncertain or change of funding

Actual Wage Determination Statement

I certify that the information contained on the "Actual Wage Determination Form" is correct and that the prospective H-1B employee is or will be paid the actual wage for this position.

Signature of Faculty Sponsor

Date

Signature of Department Head

Date