

The H-1B Visa:

**Process Walkthrough, Tips and Tricks,
and Updates as of August 2026**

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ARRIVE
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Introduction

Objectives

- Understand H-1B eligibility requirements
- Overview of the process: Registration > Petition > Consular or Change of status
- Explain what other common actions to take after getting the visa, such as changing employers, extending, terminating, etc.
- Discuss common compliance issues (DOL, USCIS. POEA)
- Analyze major regulatory updates through September 2026



Outline

1. H-1B Program Overview
2. Eligibility Requirements
3. Cap Lottery and Registration
4. Petition Process
5. After-Petition Actions: Portability, Extension, Termination
6. Compliance and Enforcement: U.S. and Philippine Gov't.
7. Key Updates Through September 2026
8. Practical Tips



What is the H-1B Visa?

Statutory Purpose

The H-1B classification allows U.S. employers to temporarily employ foreign professionals in specialty occupations.

Key Features

- Dual intent visa – Employee may seek permanent residency in the future
- Employer-sponsored
- Generally granted for up to 3 years
- Maximum 6 years absent extension provisions
- Pathway to employment-based permanent residence



Basic Eligibility Requirements 1/2

Three Core Elements

1. **Specialty Occupation** - The position must require:

- Theoretical and practical application of specialized knowledge
- At least a bachelor's degree in a specific specialty

2. **Qualified Beneficiary** - Employee must possess:

- Required U.S. degree, or
- Equivalent foreign degree, or
- Combination of education and experience



Basic Eligibility Requirements 2/2

3. Employer-Employee Relationship

PETITIONER must maintain the right to (at least one):

- Hire
- Fire
- Supervise
- Control the worker

Third-party Placements? Client job must also meet specialty occupation requirements.



Specialty Occupation Analysis

Common USCIS Questions

- Does the employer normally require a bachelor's or higher degree?
- Is the degree requirement common in the industry? Parallel positions among similar organizations
- Are duties sufficiently specialized? Or the duties sufficiently complex that the knowledge required to perform the duties is usually associated with the attainment of the degree.
- Is the degree directly related to the duties?



Specialty Occupation Analysis 2/2

Evidence

- Detailed job description
- Organizational charts
- Expert opinions
- Industry standards
- Prior hiring practices

Practice Tip

Generic job descriptions remain one of the most frequent causes of RFEs.



H-1B Cap Basics

Regular Cap

- 65,000

Advanced Degree Exemption (Master's Cap)

- Additional 20,000
- U.S. master's degree or higher

Cap-Exempt Employers

- Universities and Related nonprofit entities
- Nonprofit research organizations
- Government research organizations
- Located in Guam or Commonwealth of Northern Mariana Islands



Electronic Registration Process

USCIS requires electronic registration and payment of the registration fee before a cap-subject petition may be filed.

Step One of Cap Cases (ONLY DURING MARCH OF EVERY YEAR)

Employers:

1. Create USCIS organizational account
2. Register beneficiary
3. Pay registration fee
4. Await selection

Beneficiaries: Provide valid passport details

FY 2027 Registration Fee

- \$215 per beneficiary registration



H-1B Selection Process

Beneficiary-Centric Model

- One selection opportunity per beneficiary regardless of multiple registrations

Wage-Weighted Selection System

Major development for FY 2027:

USCIS now uses a weighted selection process based generally on the highest Occupational Employment and Wage Statistics (OES) wage level associated with the offered position.

Potential Effects

- Greater emphasis on higher wage positions
- Increased strategic wage analysis
- Possible challenges for entry-level workers



Labor Condition Application (LCA)

Department of Labor Requirements

Before filing Form I-129, employer must obtain certified LCA. Online via FLAG website.

Employer Attestations

- Pay required wage
- No adverse impact on U.S. workers (Displacement, Layoff, Lockout/Strike)
- Provide notice of filing
- Maintain public access file
- If H-1B dependent, perform recruitment steps or be exempt (Master's or \$60k wage)

Wage Requirements

- Wage includes standard, non-performance-based benefits, whether non-monetary

Common Issue

Mismatched LCA and petition information



Filing the Petition

Post-Selection Process

Required Forms

- Form I-129
- Certified LCA
- Selection Notice

Supporting Documents

- Degree documentation
- Credential evaluations
- Employer support letter
- Wage documentation

Filing Window

Generally at least 90 days following selection notice issuance



Change of Status vs. Consular Processing

Two Common Paths

Change of Status

- Employee already in U.S.
- Status changes to H-1B without departure
- Drawbacks: Not for those with status violations. Cannot travel.

Consular Processing

- Visa obtained abroad
- Entry in H-1B classification afterward
- Drawbacks: Unpredictable schedules.



H-1B Duration and Extensions

Initial Approval

Up to 3 years

Maximum

Generally 6 years

Exceptions to 6-year “Max Out” – Green Card Processing

- Approved PERM Labor Certification
- Pending or Approved I-140 immigrant petition
- Recapturing – Any time during petition period not working as H-1B



Maintenance of Status – Keeping your H-1B

Must Report “Material Changes” through Amended Petition

- Worksite relocation – must be outside of LCA’s Metropolitan Statistics Area or MSA
- Significant duty changes coupled with salary change
- Reduction in hours

Recordkeeping

- LCA records
- Payroll records
- Public access files

Employee: Must stay employed with petitioner (but see terminations and multiple employers)



Portability or Change of Employer

Requirements

- Employee was lawfully admitted to the U.S.
- New employer files a non-frivolous H-1B petition
- Employee has not engaged in unauthorized employment
- Employee is currently in a period of authorized stay (including grace periods)

Employee may start working for new employer upon USCIS's *receipt* of new employer's petition



Concurrent H-1B Employment

Working for More Than One Employer

An H-1B worker may work for multiple employers simultaneously if each employer independently files an H-1B petition.

Key Requirements

Each employer must:

- File its own H-1B petition
- Obtain its own certified LCA
- Pay the required wage
- Meet specialty occupation requirements



Termination vs. Expiration

Termination is Different from Contract Expiration or Status Violation

Employer Obligations Upon Termination

To effect a bona fide termination, **employers should:**

1. Notify the employee
2. Notify USCIS of the termination
3. Withdraw the LCA where appropriate
4. Offer reasonable cost of return transportation to the employee's last foreign residence – BUT see POEA contract



Grace Periods for Employee

Termination – the shorter period between **60 days** from termination, or through the end of their H-1B authorized stay

Before/After H-1B expires – 10 days

Employee Violates H-1B Status – No Grace Period

While waiting for Extension and authorized stay expires – 240 days from expiration of stay



H-1B Compliance Risks 1/2

DOL and USCIS Enforcement

Common problem areas:

- Wage Violations – 100% of Prevailing Wage
- Fee Violations – Fees related to H-1B program and recruitment costs must be borne by employer
- Benching/Moonlighting
- Failure to Report Material Changes to Employment – promotions, change of location, etc.
- Documentation Issues – Public Access File



H-1B Compliance Risks 2/2

Philippines Department of Migrant Workers

Employers should:

- Have contract approved by POEA
- Standard terms: Return airfare upon termination and expiration or during calamities, no at-will termination, etc.
- Work with licensed recruitment agency if hiring *en masse*

Consequences:

- Ban from future recruitment of Filipinos
- Filipino employee may be prevented from exiting PHL



Practical Tips for Employers

Before Registration

- Confirm job qualifies
- Check for candidate inadmissibilities or status violations
- Degree equivalency and relevance to job duties

Before Filing

- Draft robust support letter
- Align LCA and petition
- Address specialty occupation issue proactively

Ongoing Compliance

- Conduct periodic audits
- Train HR personnel
- Track all material changes



Regulatory Updates

H-1B Modernization Rule

- Streamlined Specialty Occupation rules H-1B visas for entrepreneurs or owners

\$100,000 Fee

On June 8, 2026, the U.S. District Court for the District of Massachusetts issued an order that vacated agency guidance implementing the \$100,000 payment requirement for certain H-1B petitions. See *State of California v. Mullin*, 1:25-cv-13829 (D. Mass.).

BUT: Proposed \$103,265 Fee for Master's Cap (potentially effective November 25, 2026)

