

H-1B STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

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1. What does the H-1B process involve?

The first step in the H-1B process is the preparation and filing of a Labor Condition Application (LCA) with the U.S. Department of Labor (DOL). This involves obtaining wage support from the State Employment Office or from an available wage survey for the position into which you are being hired, preparing the actual LCA form and sending it to the company to be posted at the location where you will be employed. When the company acknowledges that it has commenced posting, we then certify the LCA with the DOL and prepare and send the company's actual H-1B petition for signature. Once the company returns all the signed documents to us, we file your H-1B with U.S. Citizenship & Immigration Services (USCIS). If any family members will be applying for an H-4 extension or change of status with you, a separate Form I-539 application form will be sent to you for the appropriate signatures.

2. How long will it take Jackson & Hertogs (J&H) to prepare the H-1B petition?

If we have everything needed from you, i.e., completed Client Information Data Sheet and copies of all the required documents plus the wage support for the LCA, we will send the paperwork to the company for signature within 5-7 business days for new H-1 petitions (e.g. change of status, transfer of employment) or within 10-15 business days for extensions.

3. When does J&H file the H-1B petition with USCIS?

Within 1-2 business days of receiving the signed paperwork from the company, if J&H is not waiting on the receipt of anything from you or your company, such as your latest paycheck stubs, latest I-94 card, signed documents from your spouse or other documentation requested by J&H.

4. How can I get a receipt number?

USCIS issues a receipt for all petitions in approximately 1-2 weeks from the date of filing. J&H will send a copy of the Receipt Notice to you and your employer within one business day of receiving it from USCIS. We will also enter the information into our database and it will be available to you on-line through eStatus.

5. If I am in valid H-1B status with another company and a new company files a change of employer H-1B on my behalf, can I start working upon the filing of the petition?

No. You must wait until you and your new employer receive the Receipt Notice (Form I-797) from J&H, and then you may contact your new employer about commencing employment. As stated above, Receipt Notices are taking 1-2 weeks to be issued under regular processing; Receipt Notices under Premium Processing may take as little as 1-2 days. Only those who already hold H-1B status (that is, not H-4s, F-1s, L-1s or J-1s) can take advantage of the "receipt rule". Please review the J&H website for more information on the law which permits you to start work upon confirmation of filing of a new H-1B petition, called "AC-21", and its provisions on H-1B "portability".

6. What is the current processing time of H-1Bs?

Processing times of H-1Bs will vary according to the USCIS Service Center at which your case is filed. Please check our website for up-to-date Service Center-specific information regarding USCIS processing times, <http://www.jackson-hertogs.com/jit/jit.shtml>. Either you or your employer may opt to file your petition under Premium Processing, which typically involves processing within 15 calendar days. Premium processing requires a \$1000 filing fee to the USCIS. Please check our website at <http://www.jackson-hertogs.com/jh/faq/10-506.pdf> for more information on Premium Processing.

7. How do I know when my case has been approved?

You can wait until J&H contacts you or, if you feel the need to make status inquiries, you can either call USCIS and punch in your receipt number or check your status online at the USCIS website at <https://egov.immigration.gov/cris/jsps/index.jsp>. This website also allows you to create your own account to track your case so that when action is taken by the USCIS, you will receive an e-mail advising you of the change.

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Once the USCIS indicates that the case is approved, it takes about 7-10 business days for the Approval Notice to be received by J&H by regular mail. USCIS will generally agree to use express mail services for cases filed under Premium Processing because they allow us to submit a FedEx label to them with the filing. Therefore, with Premium Processing, it usually takes about 1-3 business days for the Approval Notice to be received by J&H. J&H will contact you by e-mail to advise you that the Approval Notice has been received, and to confirm the address to which it should be sent (unless your employer has requested that all mail be sent in their care), within one day of its receipt.

8. Can I start working with the company once the recording says the petition has been approved?

The fact that the recording says or the on-line case status shows that the petition has been approved is not evidence of the right to work. Your employer will not be able to complete the I-9 process without the actual approval notice. You must wait until you have received the original approval notice (Form I-797) which can then be presented to the company. The Form I-797 will be mailed to you in care of the company representative unless we receive other instructions from the company as to where and how to deliver the notice. Please do not request a fax copy.

Please note that there is only one exception to the rule that you have to wait for the approval notice before working for a new employer. If you are CHANGING employers, have previously held H-1B nonimmigrant status and are "porting" your employment to a new H-1B employer, then you can commence working based on the filing receipt. **See question #5 above.**

9. What are the causes for delay in processing cases at J&H?

J&H does its best to process cases quickly and efficiently. The most common reasons for processing delays in our office include: incomplete questionnaires, missing documents, inadequate job descriptions, no salary information, and no LCA posting notification. Another delay is caused by frequent inquiries as to the status of the case. Please give J&H 24-48 hours to return phone calls and/or respond to e-mails. In addition, please send all documents by certified or express mail so that you may track their receipt at J&H.

10. Can my spouse or children work?

No. Your spouse and children would hold "H-4" status and are not authorized to work, although they may attend school.

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Spouses and children of H-1B temporary workers may be granted specific visas to accompany the temporary worker. The derivative nonimmigrant classification which these individuals may be granted is the H-4 visa. The Consular Officer must be satisfied that a valid familial relationship exists in order for a derivative classification to be given.

Here are some frequently asked questions and answers regarding the H-4 visa.

1. Can an individual in H-4 status work?

No. While a person in H-4 status may attend school, s/he cannot work.

2. What are the requirements for the H-4 visa?

The requirements vary depending on the Consulate at which you apply. However, the following are common requirements at all Embassies/Consulates:

- The “confirmation page” of your completed Department of State visa application form, the electronic State Department **Form DS-160**. You need not bring your entire DS-160 application; your DS-160 confirmation page is all the US Embassy needs to retrieve your data. However, you must bring the DS-160 confirmation page with you during all phases of the application process. Without the confirmation page, it may not be possible to access your application and process your visa case. The DS-160 can only be created by you online; we cannot prepare it for you. Please note that it must be created not only for you, but for any and all family members who will accompany you to the United States. To create the DS-160 online, please visit the following URL: <https://ceac.state.gov/genniv>. To learn more about the DS-160, please review the State Department FAQ at this URL: http://travel.state.gov/visa/forms/forms_4401.html. If you encounter any difficulties creating the DS-160 form, please contact our office for assistance.
- **Photographs.** Most Consulates require two passport style photographs from each applicant. Check the Consulate's website for photo specifications and number of photos needed.
- **Valid passport.** Your passport must be valid for a minimum of six months and preferably for a minimum of six months beyond the requested period of stay.
- **Fee.** There are two fees. All consulates charge a non-refundable visa application fee. The second fee varies depending on your country of citizenship. Check the appropriate section of the visa reciprocity schedule for the specific fees, http://travel.state.gov/visa/fees/fees_3272.html. We suggest that when provided the option that you select a multiple entry visa that is valid for the longest period available to you. You should also review the appropriate Consulate's website for information on how the fee must be paid (e.g., demand draft, etc.).
- **Proof of relationship to the H-1B worker.** If you are the spouse of the H-1B worker, you must provide your marriage certificate as proof. Other documentation that demonstrates the bona fides of the marriage (e.g. wedding photos, wedding invitation, etc.) may also be requested by the Consulate. If you are a child of the H-1B worker, you must bring your birth certificate as proof. The Consular Officer can insist on reviewing the original documents. Therefore, we suggest that you have the original documents to present along with copies, should the Consular Officer decide to ask for copies to keep in his/her file.
- **H-1B worker's H-1B approval notice.** We recommend that you bring a copy of the H-1B petition and supporting documentation which we filed on behalf of the H-1B worker. When we send out an approval of an H-1B petition, we include an attorney-certified copy of the petition and supporting documentation. If you were also the beneficiary of a change to or extension of H-4 status that you also present your original approval notice showing that you were previously accorded H-4 status. Please note that if the H-1B worker is applying for the H-1B visa at the same time that the H-4 applicants are applying for the H-4 visas, then the original H-1B petition approval notice must be presented. If the H-4 applications are being submitted separately, then a copy of the H-1B approval notice must be submitted.
- **Proof that the H-1B worker is in valid H-1B status in the U.S.** If the H-1B worker is in the U.S., then a copy of his/her Form I-94 evidencing status in the U.S. should be presented. In addition, a current employment verification letter from the employer on letterhead which confirms that the H-1B worker is still working for the H-1B employer and/or recent pay stubs from the H-1B employer should also be presented.

3. How old must the child be in order to qualify?

The child must be under 21.

4. Do I need an appointment at the Consulate?

Yes. Please check the Consulate's website, <http://usembassy.state.gov>.

5. If my visa is approved, how long will it take to receive it?

This depends on consular workload and the length of any applicable security checks, the process may take a day, weeks or months. Check the Consulate's website, <http://usembassy.state.gov>

6. How can I find the Consulate's website?

Go to <http://usembassy.state.gov> and click on the specific country/consulate. Most of the information needed can be found in the section entitled "Nonimmigrant visas".

7. Once issued, how long will my H-4 visa be valid?

Typically, H-4 visas are issued for the validity period of the underlying principal's H-1B petition. However, depending on the country of nationality of the applicant, visas may be issued for less time. For example, Chinese nationals are issued visas for three months, valid for only two entries to the U.S., regardless of the validity of the underlying H-1B petition. This limitation is based on the reciprocity agreement between the U.S. and China. Check the reciprocity table for your country on the DOS website: http://travel.state.gov/visa/fees/fees_3272.html.