

*The H-4 FAQ begins on page 7*

### **A1. 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 Occupational Employment Statistics (OES) Survey or from an available wage survey for the position into which you are being hired, preparing the actual LCA form and sending a LCA notice to the company to be posted at the location where you will be employed (or notice to the bargaining representative, if the position is unionized). When the company acknowledges that it has commenced posting, we then submit the LCA to the DOL for certification and prepare and send the company's H-1B petition for signature. Once the company returns all the signed documents to us, we file the 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 to return to our office to submit to the USCIS.

### **A2. 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 questionnaire 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 a few business days for new/change of employer H-1B petition. If we are working on an extension with the same employer we will typically send the paper work for signature within 1-2 weeks depending on your situation and any possible travel plans. In any event, the petition cannot be filed until the LCA is certified and signed by the company HR. NOTE: these time frames do NOT apply to H-1B cap subject petitions. Those petitions are prepared so that they can be timely submitted to the USCIS during the initial processing window during the first five business days of April assuming that they are initiated timely. We do not adhere to a specific schedule for preparing these cases given that we strive to file the vast majority on the very first day.

### **A3. 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 we are not waiting on the receipt of anything from you or your company, such as your latest pay stubs, latest I-94 record/card, signed documents from your spouse or other documentation. If you (and/or a family member) have travel plans, we time the submission around that travel when possible.

### **A4. How can I get a receipt number?**

J&H will email a copy of the USCIS Receipt Notice or receipt email 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 online through eStatus. You can either check back on eStatus to link to the online USCIS update, or sign up directly through the USCIS website for email updates.

### **A5. 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?**

Yes. However, the best proof that a case was actually properly received and feed into USCIS is the receipt notice. We generally recommend that you and your employer wait on commencing employment until you receive the Receipt Notice (Form I-797, or email notice from USCIS for premium processing cases) from J&H. Proof of delivery of the package along with a copy of the filed petition can also be used but that leads to risks if for any reason the petition filing was rejected or lost in the USCIS mail room. This "receipt rule" only applies to individuals who already hold H-1B status (that is, it does not apply to H-4s, F-1s, L-1s or J-1s). 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".

### **A6. What is the current processing time of H-1Bs?**

Processing times of H-1B visa petitions vary according to the USCIS Service Center at which your case is filed. We do not have a choice in where to file a given petition as we must file at the Service Center having jurisdiction over the place of employment. Please check the USCIS website for up-to-date Service Center-specific information regarding USCIS processing times, <https://egov.uscis.gov/processing-times/>. Your employer may opt to file your petition under Premium Processing, which typically involves processing within 15 calendar days. Please check our website at <https://www.jackson-hertogs.com/update-regarding-premium-processing-fee-increase/> for more information on Premium Processing.

### A7. How do I know when my case has been approved or a request for evidence is issued?

You can wait until J&H contacts you or you can check the status online either through eStatus or on the USCIS website at <https://egov.uscis.gov/casestatus/landing.do>. The USCIS website allows you to insert your email address in order to receive pushed out notifications from the USCIS when action is taken by the USCIS. J&H will contact you by email 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. Please note that sometimes the USCIS online system is not updated immediately and sometimes the information pushed from the status update system can be confusing. For example, the email update system for premium processing cases may indicate that the “clock has stopped” when either the case has been approved or a request for evidence has been issued. If the online case status shows that a Request for Evidence (RFE) has been issued, it can take a few days for the request to reach our office. We will send you an email within a day of our receiving an RFE and let you know what, if anything, we need from you and/or your employer to prepare the response. We work to respond to RFEs as quickly as possible but keep in mind that a complete response is far more important than responding quickly.

### A8. Can I start working with the company once the recording or online case status says the petition has been approved?

An online case status update indicating 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. EXCEPTION: If you are in the United States, 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 of the petition. See question A5 above.

Unless you are eligible to work based on the above mentioned “receipt rule”, you must wait until you have received the original approval notice (Form I-797) with attached Form I-94 card (or admission-based I-94 online record). These documents can be presented to the company along with your unexpired passport to complete your Form I-9 and on-boarding process with your employer.

Please note that if you are outside the U.S., you must be admitted to the U.S. as an H-1B nonimmigrant before you can join your employer. If you do not have a valid H-1B visa in your passport and you are not a Canadian citizen, you will need to apply for an H-1B visa at a U.S. Consulate before you can travel to the United States. Once you are admitted to the U.S. as an H-1B nonimmigrant, you can commence employment during the validity period of the petition.

### A9. I am in H-1B status now, what if the H-1B extension petition is filed on my behalf on time but USCIS doesn't make a decision before my I-94 expires?

So long as the H-1B visa petition was filed before the Form I-94 expires, you are considered to be in “a period of stay authorized by the Attorney General” while the extension remains pending with the USCIS. During this period after the I-94 expires and while the petition is pending, you do not accrue “unlawful presence” in the United States. Furthermore, you have continued work authorization beyond the expiration date of the Form I-94 to work for the same employer while the petition is pending, under the same conditions and limitations noted on the initial authorization. Once the petition is adjudicated, this receipt based authorization ends. If the USCIS denies the extension of stay, the employment authorization automatically terminates upon notification of the denial decision and you would begin to accrue unlawful presence in the United States. If/when the petition is approved and the extension is granted, there are no issues. When completing the reverification section of your employer's Form I-9 while the petition extension is pending, the H-1B receipt notice in combination with your valid unexpired passport with Form I-94 card/record are considered “List A” documents for I-9 purposes.

### A10. I have an approved H-1B cable petition. Do I have to go to the Embassy/Consulate listed on the Form I-797 to apply for my visa?

No, you are not required to apply at the Embassy/Consulate that was designated on the petition and listed on the Form I-797. All H-1B visa petitions are submitted with a duplicate copy so that the USCIS can enter the case in the PIMS system so that any U.S. Embassy/Consulate has access to the copy. However, if you wish to schedule your visa appointment at a different Embassy/Consulate, please contact the Embassy/Consulate ahead of time to ensure the new Embassy/Consulate will consider your visa application. In addition, if you are considering applying in a country other than your country of citizenship as a third country national (TCN), you need to verify that the Consulate will accept jurisdiction for your case type. You can consult with your J&H attorney but keep in mind that we may require authorization from HR to provide additional services, or you may need to pay for an individual consultation. You should also review our [Travel web page](#) for more information.

### A11. I have an approved H-1B cable petition with a validity period starting October 1<sup>st</sup>. Can I apply for my H-1B visa earlier?

Yes, you can apply for your H-1B visa in advance but please note that some Embassies/Consulates will not entertain applicants for visas significantly in advance of the validity date on Form I-797. Many Embassies/Consulates will only accept applications 90 days in advance of the validity start date on Form I-797. While you can attempt to make your appointment ASAP, we suggest not scheduling the actual appointment until at least August, unless specifically instructed otherwise by the Embassy/Consular website where you will be applying.

For example, the U.S. Consulate in India will not accept H-1B visa applications earlier than 90 days before the petition start date listed on I-797 Approval Notice, as evidenced in Q.10 of the “FAQ - Work Visa” Section (reproduced at right). Please check the appropriate U.S. Consulate’s website to find the related information for your country.

#### Q.10 My H1B Employment Petition (USCIS Form I-797) shows an employment start date. How early can I apply for an H1B visa at the Consulate?

You can apply for an H1B visa up to **90 days** before the petition start date listed on the form I-797, Notice of Action. However, you cannot enter the US earlier than **10 days** prior to the start date listed on the I-797 unless you are already working on an H1B visa for the same petitioner.

[↑ back to top](#)

### A12. I have an approved H-1B cable petition with a validity period starting October 1<sup>st</sup>, and I already received my H-1B visa. How early can I come into the U.S.?

You can be admitted to the U.S. up to 10-days before October 1st. Please note that you are not authorized to work during this ten-day period. Also, if you are currently in another nonimmigrant status which allow you to work in the United States but you apply for the H-1B visa and return to the United States in H-1B status but before the validity period commences, you will not have work authorization. Therefore, you need to be careful when you activate H-1B status and should typically plan to do so after October 1.

### A13. 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. Please give J&H 24-48 hours to return phone calls and/or respond to emails. In addition, please submit all required documents by uploading them directly to your eStatus Documents file, electronically by email, or by express courier. If you choose to email your documents to us or upload them directly in your eStatus Documents file, please do so in Microsoft Word, PDF, or JPEG formats. If you need access to a drop box, please advise our office.

### A14. Can my spouse or children work and/or attend school?

As of May 28, 2015, some H-4 spouses are eligible to file for employment authorization documents. Please see the below section B (page 8) for specific details as to which H-4 spouses are eligible. If an H-4 spouse is not eligible, s/he cannot work. H-4 children cannot work. Both H-4 spouses and children can attend school.

### A15. What are the requirements for applying for the H-1B visa?

The requirements vary depending on the Embassy/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 U.S. Embassy/Consulate 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 submit 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, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/ds-160-online-nonimmigrant-visa-application/ds-160-faqs.html>. If you encounter any difficulties creating the DS-160 form, please contact our office for assistance.
- Frequently asked questions about how to fill out Form DS-160:
  - “Have you made specific travel plans?”
    - Answer: If you have made specific travel plans to enter the U.S., write the specific travel dates.
  - “Address where you will stay in the U.S.”

## H-1B STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

- Answer: If you know which hotel or the address of the place where you will stay after you enter the U.S., write the address. Otherwise, you can write “care of” the work location listed on Page 5 of Form I-129.
- “U.S. point of contact and Point of Contact’s address, phone number and email address”
  - Answer: If you know who your manager is, you can write your manager’s contact information. Otherwise, write the contact information of the company representative who signed the Form I-129. This information is available on Page 1 of Form I-129.
- “Name of person/company who filed petition/ organization name”
  - Answer: The information about the company that filed the petition is available on Page 1 of Form I-129. The contact information of the company representative who signed the petition is also available on Page 1 of Form I-129.
- “Person/entity paying for the trip”
  - Answer: If you are paying for the trip, write “self”. If your employer is paying, write the name of your employer.
- **Photographs.** Embassies/ Consulates require that a photo be uploaded when completing the DS 160. In addition it is recommended that you bring a photo to your interview just in case your photo did not upload properly. Check the Embassy’s/Consulate’s website for photo specifications.
- **Valid passport.** Your passport must be valid for a minimum of six months for admission, and must be valid for a minimum of six months beyond the requested period of stay for you to be admitted to the full visa petition validity period.
- **Fee.** There are two fees. All Embassies/Consulates charge a non-refundable visa application fee (MRV). The second fee varies depending on your country of citizenship. Check the appropriate section of the visa reciprocity schedule for the specific fees, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.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 Embassy’s/Consulate’s website for information on how the fee must be paid (e.g., check, credit card, etc.).
- **H-1B worker’s H-1B approval notice.** The Embassy/Consulate will check the USCIS PIMS system for a copy of the petition and confirmation of approval. Nevertheless, we recommend that you bring a copy of the H-1B petition (Form I-129, I-129 H Supplement, I-129 Data Collection Form, and Employer’s Support Letter), the original I-797 approval notice, and supporting documentation with you. A copy of these forms and documents was included with the original approval packet that we sent to you after the petition was approved. Furthermore, you should read through the petition and be prepared to respond to questions specifically regarding the position you will hold and your qualifications.

### A16. Once issued, how long will my H-1B visa be valid?

Typically, H-1B visas are issued for the validity period of the H-1B visa petition; however, it is important to review the reciprocity table for your country of nationality. Depending on the country of nationality of the applicant, visas may be issued for less time. For example, Chinese nationals are issued multiple-entry visas that are valid for twelve months, 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, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html/>.

### A17. Track your I-94 each time you enter the U.S.

Upon entering the U.S., CBP will create/update your (and any family member’s) I-94 entry record. After admission, you should retrieve the I-94 record(s) and provide our office with a copy of each record and passport admission stamp. You may upload copies to your eStatus account, email copies, or you can send us hard copies via U.S. mail. The date stamp must be legible on all copies. If any family members also applied for and obtained a new visa stamp, please provide us with a copy of the stamp(s), as well as a copy of the I-94 cards/records and passport visa admission stamps if/when they enter the United States. Maintaining copies of all of your Forms I-94 cards/records as well as the most up to date visa information is critical for several reasons including:

- Ensuring the documents were issued properly;
- Tracking any upcoming expiration dates;
- Duplicate copies in case of a lost or stolen passport;
- Renewing your current status; and
- Answering questions you may have regarding remaining in lawful status in the U.S.

Each time you enter the U.S. as a nonimmigrant (with some exceptions for TNs, or for short travel to Canada or Mexico); you will receive a new Form I-94 card/record. It is critical that you review the new Form I-94 card/record every time you enter the United States to ensure that the visa classification is accurate and that you have been admitted for the proper period of time. As a reminder, if you do not receive a paper I-94 card, you must print and save a copy of your I-94 arrival record from the CBP website at <https://i94.cbp.dhs.gov/i94/#/home>.

## H-1B STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

If your passport expires earlier than the full allowable duration of your category and petition, you can only be admitted to the date that the passport expires, and will go out of status after that date. Therefore, it is always important to keep your passport valid for as long as possible. Overstaying your authorized period of stay as indicated on your most recent I-94 card/record means that you are unlawfully present in the U.S., and can have serious consequences.

### A18. Update your U.S. home address with USCIS

If/when you have a new home address in the U.S., please provide us with the address so that we may update our records. NOTE: You must also file Form AR-11 with USCIS within 10 days of any new/change of address in the U.S. You can notify USCIS of your change of address online or by mail. You can access the USCIS online change of address page at <https://www.uscis.gov/ar-11>. If you have any pending applications, select the option that enables USCIS to update your address on pending applications. After completing the change of address, please save the PDF (Adobe Acrobat) document saving a record of your online address update, and email the PDF document to the J&H attorney responsible for your case. If this change of address also means that your work site address has been changed, you need to be sure to advise us of this change. For individuals who telecommute from their homes, simply advising us of a change of home address is not sufficient; you must also specifically indicate that there was a change in work site.

### A19. What happens if my work site changes?

If your work site is going to change, please notify our office immediately BEFORE the change occurs. If the change of worksite is to a new location in the same area of employment, then the LCA posting will need to be repeated in the new location. If the change of worksite is to a new area of employment (e.g., new metropolitan statistical area), then your employer must file a new LCA and an amended H-1B visa petition before you move to the new work site. This includes home office moves for telecommuting employees. This amended petition can be pending when you move but must be filed *before* the change happens. Changing work sites before such an amendment is filed could cause you to be in violation of the terms of your H-1B status. This is based on guidance issued by the USCIS on July 21, 2015 based *Matter of Simeio Solutions, LLC*. More info can be found on our website [here](#).

### A20. Administrative Site Visit Verification Program

From time to time the USCIS sends officers to work sites to conduct an interview with H-1B employees, managers and HR under the Administrative Site Visit Verification Program (ASVVP). USCIS randomly selects H-1B and L-1 petitions for ASVVP site visits. Most H-1B workers will never experience a site visit. If you are selected, usually you will not be notified until the Fraud Detection and National Security (FDNS) officer physically appears at your work site. The FDNS officer typically seeks to confirm information contained in your H-1B visa petition, pertaining to your position, qualifications, salary and work site location. The FDNS officer will have identification that s/he will present before any questions are asked. All questions will relate to your H-1B employment. If FDNS contacts you, please cooperate with the FDNS officer and answer any reasonable questions. Please notify the HR department and our office if you are contacted. We will ask you to provide detailed notes as to what you were asked and what information you provided. We will also want a scan of the business card that was given to you and any requested follow up. Furthermore, if your work site address is scheduled to change, please notify HR and our office before you move to a new work site—see above. If an FDNS officer goes to the address originally listed on the petition and does not find you working there, your H-1B or L-1 petition might be revoked.

### A21. Limitation of Stay

As an H-1B nonimmigrant, you may be admitted for a period of up to three years. Your time period in H-1B status may be extended, but generally cannot go beyond a total of six years, though some exceptions do apply under sections 104(c) and 106(a) of the American Competitiveness in the Twenty-First Century Act (AC21). See more about AC21 extensions below.

### A22. Recapture of Time

One may be admitted to the United States for up to 6 years as an H-1B nonimmigrant unless eligible for an extension of stay under AC21. Any time spent in the United States as an H-1B or L-1 nonimmigrant is counted against the individual's limitation of stay. During one's six-year admission in H-1B status, any time spent outside the United States or in a different nonimmigrant status (e.g., H-4, L-2, F-1, TN, etc.) does not count against this limitation of stay. When an H-1B visa petition is filed we will ask you to provide us with information regarding any time you have spent outside the United States or in a different nonimmigrant status since you entered into H-1B status so that we may "recapture" this time and add it back to your limitation of stay. The USCIS only

## H-1B STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

considers full days spent outside the United States so quick trips to Canada for example of less than 24 hours will not count as a day outside the United States.

In order to apply for recapture of time, one must provide evidence to prove that he or she was outside the U.S. for the amount of time for which recapture is requested. Such evidence can be copies of passport stamps, I-94's, hotel receipts, and/or flight itineraries/tickets.

### A23. Extension of H-1B beyond the Six-Year Admission under AC21

These AC21 exceptions allow you to extend your H-1B status beyond the six-year admission, based on where you are in the green card process. If a PERM application or I-140 immigrant visa petition is filed before the end of your 5<sup>th</sup> year of H-1B status and remains pending with the DOL or USCIS respectively, then you may be eligible for extensions of stay in one-year increments while the application/petition remains pending. If a PERM application is filed before the end of your 5<sup>th</sup> year of H-1B status and is certified, then you may also be eligible for extensions of stay in one-year increments even though your I-140 is not filed before the end of your 5<sup>th</sup> year or is still pending. Similarly, if an I-140 immigrant visa petition has been approved on your behalf and the priority date is not current, you will be eligible for H-1B visa petition extensions in three-year increments. Note that these are the general rules. Please see our [FAQ on H-1B Extension beyond Sixth Year under AC21](#).

### A24. Does a laid off H-1B worker have a grace period to change employers?

A laid off H-1B worker and his/her dependents will be given a grace period of up to 60 consecutive days or until the end of the authorized validity period, whichever is shorter, once during each authorized validity period. During this grace period, a laid off H-1B worker and his/her dependents will not be considered to have failed to maintain nonimmigrant status solely on the basis of a cessation of the employment. He/she could use the grace period to prepare to depart the U.S., to find another employment in the same nonimmigrant visa classification, or to change to another nonimmigrant status.

### A25. Do I need to do any tax withholding adjustment after I change my status from F-1 or J-1 to H-1B?

The Internal Revenue Code (IRC) imposes the liability for Social Security and Medicare taxes on both the employer and the employee who earns income from wages in the U.S. The IRC provides one exemption from Social Security/Medicare taxes for foreign students and another exemption from Social Security/Medicare taxes for all students, American and foreign. This is the so-called "student FICA exemption". Therefore, if you are currently a student, scholar, trainee, teacher, or researcher in F-1, J-1, M-1, Q-1 or Q-2 status, you probably are exempted from Social Security/Medicare taxes. If you are currently in F-1, J-1, M-1, Q-1 or Q-2, and will change your status to H-1B, then you will be liable for Social Security/Medicare taxes from the first day you start your employment in H-1B status, regardless of whether you are a nonresident or resident alien, and regardless of whether your wages may or may not be exempt from federal income taxes under an income tax treaty. For specific advice on whether you are exempt, and when you become subject to FICA and Medicare withholding, please contact a qualified tax advisor, as our firm does not provide tax advice. More information can be found on the IRS website: <https://www.irs.gov/individuals/international-taxpayers/foreign-student-liability-for-social-security-and-medicare-taxes>



## H-4 STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

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

### B1. Can an individual in H-4 status work?

Children in H-4 status cannot work but H-4 spouses in certain situations are eligible to apply for work authorization. Effective May 26, 2015, eligible H-4 spouses are able to submit applications for employment authorization to the USCIS. Once the employment authorization document (EAD) is issued, these H-4 spouses will have unrestricted employment in the U.S.

In order for an H-4 spouse to be eligible for the H-4 EAD, the H-1B spouse must either have an approved Form I-140 or have been granted an extension of status under Section 106 (a) or (b) of the American Competitiveness Act of the 21st Century (this section allows for one year extensions based on the PERM/I-140 being filed before the end of the fifth year of H-1B stay).

Eligible H-4 spouses must file Form I-765, Application for Employment Authorization, <http://www.uscis.gov/i-765>, with supporting evidence and the required filing fee in order to obtain employment authorization and receive a Form I-766, Employment Authorization Document (EAD). The EAD must be issued and in hand before the H-4 spouse commences working in the United States.

Beneficiaries of a change to or extension of H-4 status who wish to file for their H-4 EAD at the same time may do so. USCIS will first adjudicate the H-4 application and once it is completed, adjudicate the EAD. The expiration on the EAD will likely be the same date as the expiration date on the most recent I-94 indicating the beneficiary's H-4 non-immigrant status.

Once an H-4 spouse is working pursuant to a valid EAD, s/he must timely file EAD renewals in order to maintain uninterrupted employment authorization. If the H-4 EAD renewal is timely filed, DHS regulations provide for an automatic extension period, which is counted from the expiration date stated on the H-4 EAD, or the expiration date on Form I-94, whichever is earlier. For H-4 EAD renewal applications pending as of May 4, 2022, and those H-4 EAD renewal applications **timely** filed up until October 26, 2023, DHS temporarily increased the automatic extension period to up to 540 days (or up to the I-94 expiration, whichever is earlier). After October 26, 2023, H-4 EAD renewal applications that are **timely** filed will benefit from the normal automatic extension period of up to 180 days (or up to the I-94 expiration, whichever is earlier).

### B2. What are the requirements for the H-4 visa?

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.

The requirements vary depending on the Embassy/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 U.S. Embassy/Consulate 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 file 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, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/ds-160-online-nonimmigrant-visa-application/ds-160-faqs.html>. If you encounter any difficulties creating the DS-160 form, please contact our office for assistance.
- **Photographs.** Embassies/Consulates require that a photo be uploaded when completing the DS 160. In addition it is recommended that you bring a photo to your interview just in case your photo did not upload properly. Check the Embassy's/Consulate's website for photo specifications.
- **Valid passport.** Your passport must be valid for a minimum of six months for admission, and for a minimum of six months beyond the requested period of stay for you to be admitted to the full visa petition validity period.
- **Fee.** There are two fees. All Embassies/Consulates charge a non-refundable visa application fee (MRV). The second fee varies depending on your country of citizenship. Check the appropriate section of the visa reciprocity schedule for the specific fees, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.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 Embassy's/Consulate's website for information on how the fee must be paid (e.g., check, credit card 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, joint utility bills, joint credit card statements, joint bank statements, etc.) may also be requested by the Embassy/Consulate. If you are a child of the H-1B worker, you must bring your birth certificate as

## H-4 STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

proof of the relationship. The Consular Officer may 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 you should also present your own original Form I-797 approval notice showing that you were previously accorded H-4 status. 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 immigration status in the U.S. should be presented. Upon entering the U.S., s/he should download and print a copy from the Customs and Border Protection website, <https://i94.cbp.dhs.gov/i94/#/home>. 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.

### B3. How old can the child be in order to qualify?

The child must be under 21. Once a child is over the age of 21, s/he is not considered a child under the U.S. immigration laws and to remain in the U.S. must change to a non-derivative status such as F-1. Some children are protected based on whether the family is in the immigration process. If your child is between 18 and 21 years of age, please contact our office as these situations require a consultation.

### B4. Can an H-4 nonimmigrant attend school?

Yes. However, an H-4 child cannot work on campus, and an H-4 spouse cannot work on campus unless s/he holds an EAD (see above section on H-4 EADs).

### B5. Do I need an appointment at the Embassy/Consulate?

Yes. Please check the Embassy's/Consulate's website, <https://www.usembassy.gov/>.

### B6. 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. Please note the process may take a day, weeks, or longer. Approximate visa wait times for all U.S. Consulates can be obtained at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html>.

### B7. How can I find the Embassy's/Consulate's website?

Go to <https://www.usembassy.gov/> and click on the specific Embassy/Consulate. Most of the information needed can be found in the section entitled "Nonimmigrant visas".

### B8. 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 applicant's H-1B petition. However, it is important to review the reciprocity table for your country of nationality. Depending on the country of nationality of the applicant, visas may be issued for less time. For example, Chinese nationals are issued multiple-entry visas for twelve months, 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: <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html/>.

### B9. Track your I-94 each time you enter the U.S.

Upon entering the U.S., CBP will create/update your I-94 entry record. After you are in the U.S., please send our office a copy of your Form I-94 card/online record (available at <https://i94.cbp.dhs.gov/i94/#/home>) and your passport admission stamp to our office. You may upload copies to your eStatus account or email copies, or you can send us hard copies via U.S. mail. The date stamp must be legible on all copies. If any family members also applied for and obtained a new visa stamp, please provide us with a copy of the stamp(s), as well as a copy of the I-94 cards/records and passport visa admission stamps if/when they have entered the United States. Maintaining copies of all of your Forms I-94 cards/online records as well as the most up to date visa information is critical for several reasons including:

- Ensuring the documents were issued properly;



## H-4 STATUS AND PROCESSING | FREQUENTLY ASKED QUESTIONS

- Tracking any upcoming expiration dates;
- Duplicate copies in case of a lost or stolen passport;
- Renewing your current status; and
- Answering questions you may have regarding remaining in lawful status in the U.S.

Each time you enter the U.S. as a nonimmigrant (with some exceptions for TNs, or for short travel to Canada or Mexico); you will receive a new Form I-94 card/record. It is critical that you review the new Form I-94 card/record every time you enter the United States to ensure that the visa classification is accurate and that you have been admitted for the proper period of time. As a reminder, if you do not receive a paper I-94 card, you must print and save a copy of your I-94 arrival record from the CBP website at [www.CBP.gov/I94](http://www.CBP.gov/I94). The I-94 admission number will no longer be available once you depart the United States.

If your passport expires earlier than the full allowable duration of your category and petition, you can only be admitted to the date that the passport expires, and will go out of status after that date. Therefore, it is always important to keep your passport valid for as long as possible. Overstaying your authorized period of stay as indicated on your most recent I-94 card/record means that you are unlawfully present in the U.S., and can have serious consequences.

### **B10. Update your U.S. home address with USCIS**

If/when you have a new home address in the U.S., please provide us with the address so that we may update our records. NOTE: You must also file Form AR-11 with USCIS within 10 days of any new/change of address in the U.S. You can notify USCIS of your change of address online or by mail. You can access the USCIS online change of address page at <https://www.uscis.gov/ar-11>. If you have any pending applications, select the option that enables USCIS to update your address on pending applications. After completing the change of address, please save the PDF (Adobe Acrobat) document saving a record of your online address update, and email the PDF document to the J&H attorney responsible for your case.