

Revised 7.07/dlw

FROM: Dawn White, Director, International Faculty Services

RE: **H-1B Visas for International Faculty and Researchers**

Portland State University departments wishing to bring foreign nationals to Portland State University to teach, conduct research or hold other professional positions on a temporary basis may want the University to apply for H-1B visa status on the foreign national's behalf. In most circumstances, **the University must receive approval of the H-1B petition from US Citizenship and Immigration Services (formerly the US Immigration and Naturalization Service) BEFORE a foreign national can begin employment.**

It normally takes three to six months to secure H-1B visa status, unless the employer or the beneficiary pays a "premium processing" fee of \$1000 for expedited service (please see section on fees, below).

This packet gives general information about this visa and outlines the procedures for obtaining H-1B visa status for a nonimmigrant hire. Included in the packet are forms for the hiring department and prospective employee, a sample memorandum from the department to US Citizenship and Immigration Services (USCIS), and a document checklist.

General Information (H-1B visas)

The H-1B nonimmigrant worker visa allows temporary employment of a worker in a "specialty occupation." A specialty occupation requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation, and the attainment of a bachelor's or a higher degree in the specific specialty as a minimum for entry into the occupation in the U.S. This visa can appropriately be used for visiting faculty, researchers, and other professionals.

The H-1B visa is "employer specific." Thus, we must obtain H-1B visa status for your applicant even though he or she may already have H-1B visa status from another U.S. employer. This also means that the new employee may work *only* for Portland State University.

Please note that most temporarily employed foreign teachers and researchers come to Portland State University on Exchange Visitor (J-1) visas. The J-1 visa can normally be obtained much more quickly than an H-1B visa. Please call Anne George, International Student and Scholar Advisor, at 5-8596 for further information on the J-1 exchange visitor visa.

The H-1B visa allows the PSU sponsoring department and the applicant to have "dual intent." Under the doctrine of dual intent, the applicant may have the simultaneous intention of holding an H-1B visa and applying for permanent residence in the future, or the department may have the expectation of ultimately sponsoring the faculty member for permanent residence, particularly if the faculty member is on tenure track. Thus the H-1B visa offers a bridge between nonimmigrant status and permanent resident status. (For more information about permanent residence, please see my memo posted on the OIA website at <http://www.oia.pdx.edu/ifs>. Under the Resources bar, click on the document titled Hiring International Faculty.)

Petitions for an H-1B visa at PSU are normally requested for *at least* one year of full-time academic employment. Departments can request up to three years of employment in H-1B status for their applicant and can request extensions until the maximum of six years in H-1B status has been reached.

Hiring departments must agree to abide by employer conditions as required by the U.S. Department of Labor and USCIS (please see details on the H-1B Visa Departmental Request Form, which is part of this packet). If an employee is dismissed before the end of the authorized period of H-1B employment, the department is responsible for paying the reasonable costs of return transportation of the employee to the employee's last place of foreign residence.

If your H-1B applicant is outside the U.S., he or she will need time to apply for an H-1B visa at an American embassy or consulate in order to enter the U.S. If your H-1B applicant is in the U.S. and has a J visa, the possibility exists that he or she may not be able to change from a J to an H visa. Please contact me for details.

Spouses and children of foreign nationals who hold H-1B visas are eligible for H-4 visas as dependents of the H-1B visaholder. Family members with H-4 visas may not work in the U.S. under any circumstances.

Application Procedure

There are three important steps in the application for employment under an H-1B visa:

1. Prevailing Wage Determination. This step is to confirm that the wage offered the prospective employee is at least the actual wage being paid to all other individuals with similar experience or qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher. Because most positions at PSU are covered by collective bargaining agreements, this step is a quick and easy one.

2. Labor Condition Application. After determining that the wage offered the candidate is at least as high as the minimum salary rate for the position according to AAUP or other agreements, PSU files a Labor Condition Application (LCA) with the Department of Labor. By filing this document, the academic department affirms its willingness to pay the higher of the prevailing or actual wage, submit notice of filing to the University's collective bargaining representative, make the LCA and supporting documents available for public examination, and ensure that the prospective employee's work will not adversely affect the working conditions of workers similarly employed.

3. Application to US Citizenship and Immigration Services (USCIS). I assemble documents and send the H-1B petition (I-129, Original Petition for a Nonimmigrant Worker) and supporting materials to the USCIS Service Center in Laguna Niguel, CA. The cost of the petition is \$320 and is usually borne by the faculty member, unless the department has made arrangements to cover it. If there are family members needing to change their visa status to match the prospective employee's, an additional petition must be submitted by the family members at the same time. This petition, I-539, Application to Extend/Change Nonimmigrant Status, requires a filing fee of \$300, which is covered by the faculty member.

Before these three steps are taken, the department submits materials to me using instructions and forms in this packet. Included in the information the department submits is a letter addressed to US Citizenship and Immigration Services outlining the responsibility of the position, stating the salary level and employment dates, and providing information on the beneficiary's background. This letter must be signed by the department chair, dean, and Vice Provost for Administration and Planning. The letter must state the department's willingness to comply with the terms of the Labor Condition Application, including

return transportation if the employee is dismissed before the end of the employment period. A sample letter is included in this packet. Please email me a draft of the letter before it is routed for signatures by the dean and Vice Provost for Administration and Planning.

Please gather the information and documents outlined in the H-1B visa checklist provided for your convenience. The department completes the H-1B Visa Departmental Request Form; the applicant fills out the H-1B Visa Prospective Employee Form. Return both forms and the required accompanying documents to me in the Office of International Affairs, 632 SW Hall St. My office is Room 216.

Fees

- 1) A filing fee of \$320 (effective July 30, 2007) accompanies the petition. This fee is normally paid by the faculty member, as long as payment of that fee doesn't drop the salary below the prevailing wage.
- 2) On December 8, 2004, President Bush signed the H-1B Visa Reform Act of 2004, creating a new "Fraud Prevention and Detection" fee of \$500, which applies to any new petition filed on or after March 8, 2005. The law stipulates that this fee must be paid by the employer.
- 3) Optional. Premium Processing fee of \$1000. It can take up to three or four months, sometimes longer, to secure an H-1B visa after the petition is submitted. USCIS will process an H-1B petition within 15 calendar days if it receives a request for Premium Processing Service accompanied by a fee for \$1000. (This fee is in addition to the \$190 petition filing fee.) The Premium Processing fee can be paid by the employer or the faculty member, but it cannot be paid by the faculty member if doing so would drop the faculty member's salary below the prevailing wage.

In the past, higher education competed with private industry for a limited number of H-1B visas. In October of 2000, President Clinton signed a bill into law that exempts higher education from the yearly H-1B cap. Additional good news is that the bill includes a "portability provision" which allows H-1B workers to change jobs when a new employer files a new petition, i.e. without waiting for the official approval notification from USCIS. However, other factors can cause delays which make it impossible for prospective H-1B workers to begin their appointments on the desired dates. For this reason, **departments should contact me as soon as possible if it appears likely that a non-citizen will be appointed.** If you have any questions, please call me at ext. 5075.

Attachments:

- 1) H-1B Visa Checklist
- 2) H-1B Visa Departmental Request Form
- 3) sample letter from department to BCIS
- 4) H-1B Visa Prospective Employee Form

H-1B VISA CHECKLIST

Please submit the following documents to Dawn White, Director of International Faculty Services, Office of International Affairs, 632 SW Hall St, Room 216. This checklist is for your use in making sure all required documents are included.

From the Department, College, or School:

- ___ 1. H-1B Visa Departmental Request Form.
- ___ 2. Memorandum from employer to US Citizenship and Immigration Services (USCIS). Please use the attached sample memorandum as a guide.
- ___ 3. Copy of letter of offer, signed by department chair and prospective employee.
- ___ 4. Check for \$500 made payable to Department of Homeland Security (vendor # 890031917). Be sure to use the Laguna Niguel, CA address for DHS on the check but **do not send the check.** Have it delivered to Dawn White, as it must accompany the petition.

From the Prospective Employee:

- ___ 1. H-1B Visa Prospective Employee Form.
- ___ 2. Copy of highest degree/diploma. Include a certified translation of degree/diploma **only** if it is not in English. The certification must include the translator's name, signature, date and the following statement: "I certify that I am competent to translate [name of language] into English and that this is an accurate translation of the original."
- ___ 3. If the degree does not specifically state the academic field of the degree, include a transcript (unofficial is acceptable) of the degree program.
- ___ 4. Curriculum vitae. Include educational and professional history, list of professional memberships, awards, honors, and list of publications.
- ___ 5. Copy of photo identification page from your passport. Page should show passport expiration date, your full name, and your birth date.
- ___ 6. Check or money order for \$320 made payable to Department of Homeland Security (do not abbreviate). The payment must be drawn on a U.S. bank in U.S. currency, with the name of the applicant on the face of the check or money order. Include a separate check for \$1000, also payable to Department of Homeland Security, if you are requesting Premium Processing (expedited handling of the petition).

For ALL H-1B prospective employees currently in the U.S.:

- ___ 7. Copy of visa page from passport.
- ___ 8. Copy (front and back) of I-94 Departure Card (small white card stapled into passport). Please copy so that both sides of the I-94 are on the same side of the page.

- ____ 9. For all family members of prospective employees currently in the U.S. applying for H-4 status:
Copy of front and back of I-94 Departure Cards.
Completed Form I-539 (I can assist in preparation.)
Check or money order for \$300 made payable to Department of Homeland Security.

For prospective employee currently in F-1 status:

- ____ 10. Copy (front and back) of current and all previous I-20 Forms.
- ____ 11. Copy (front and back) of Employment Authorization Document (EAD) if applicant is currently on Optional Practical Training. Please copy so that both sides of the EAD are on the same side of the page.

For prospective employee currently in J-1 status:

- ____ 12. Copy (front and back) of current and all previous IAP-66/DS-2019 forms.
- ____ 13. Copy of waiver from USCIS or recommendation from Department of State to waive two-year home residence requirement, unless clearly not subject to two-year home residence requirement.

For prospective employee currently in H-1B status with a different employer:

- ____ 14. Copies of all Forms I-797 (Approval of H-1B Petition).

**H-1B VISA
DEPARTMENTAL REQUEST FORM
(to be filled out by employing department)**

Return to:

Dawn White, Director
International Faculty Services
Office of International Affairs
632 SW Hall St (216 East Hall)
PO Box 751 Portland OR 97207-0751
Phone: 503/725-5075, Fax: 503/725-5320
E-mail: whited@pdx.edu

1. Department _____ Index for express mailing documents _____
2. Name of prospective H-1B employee _____
3. Date of birth (month/day/year) _____ 4. Highest academic degree earned _____
5. Occupation _____
6. PSU job title _____
7. Percent time on PSU job (FTE) _____
8. Period of employment (give exact dates; these dates usually conform to the dates on the prospective employee's letter of offer or PSU contract, unless the employee is tenure track, in which case you can request up to three years), from _____ to _____
9. Salary rate _____ based on ____-month appointment
10. Provide brief non-technical description of job to be performed _____

11. Applicant's present occupation and brief summary of prior work experience _____

12. College/university education required for job (enter number of years) _____
13. College/university degree required for job (specify) _____
14. State license required, if any _____
15. Experience required (in job offered occupation): Years _____ Months _____
16. Other special requirements, if any _____
17. Occupational title of person who will be alien's immediate supervisor _____

18. Number of employees alien will supervise _____

The Immigration Act of 1990 requires PSU to submit a Labor Condition Application (LCA) to the Department of Labor, before submitting an H-1B visa application form to US Citizenship and Immigration Services. Before we can do so, please certify the following statements and complete the required information.

We certify that:

a. The salary being paid to the above-named employee is at least the **actual wage** being paid to all other individuals with similar experience and qualifications for the specific employment in question or the **prevailing wage** for the occupation in the area of employment, **whichever is higher**. The salary offered the prospective employee must meet or exceed the minimum salary rates as recorded in the respective collective bargaining agreement.

b. We agree to keep payroll records of the alien and of all employees whose wages were used to calculate the actual wage for three years beyond the validity of the Labor Condition Application.

c. The vacation time, sick leave, and other benefits offered to this employee are equivalent to that offered to other U.S. workers in the same classification.

d. Employing this person will not adversely affect the working conditions of U.S. workers similarly employed.

e. There is no strike, lockout, or work stoppage due to a labor dispute in this occupation.

f. This academic unit will provide notice of this filing to the bargaining representative of workers in the occupation in which H-1B nonimmigrants will be employed.

g. We agree to comply fully with the terms of the Labor Condition Application and the H-1B visa stated above for the duration of the alien's employment in H-1B status at PSU.

h. We fully understand that any willful violation connected with providing inaccurate information for this H-1B visa or Labor Condition Application may incur a severe penalty that has a long-range impact on Portland State University's ability to employ foreign nationals.

- i. **As required by US Citizenship and Immigration Services, we agree to pay the reasonable cost of return transportation to the alien's last place of foreign residence if he or she is dismissed by our department before the end of the authorized period of H-1B visa employment at PSU.**

Certified by:

Department Head

Print name

signature

date

SAMPLE MEMORANDUM FOR FILING AN H-1B VISA PETITION

NOTE: This should be on departmental letterhead. Return completed letter to Dawn White with other documents. Please email Dawn [whited@pdx.edu] a draft of the letter before it is routed for signatures by the dean and Vice Provost for Administration and Planning.

Date

TO: US Citizenship and Immigration Services

FROM: John Doe, Head, Department of Biology

RE: Joan Brown

We request your assistance in obtaining H-1B visa status for Dr. Joan Brown for the period September 16, 2004 to September 15, 2007. Dr. Brown has been offered an appointment as Assistant Professor in the Department of Biology at an annual salary rate of \$XX,XXX based on a 9-month appointment.

Dr. Brown will teach undergraduate and graduate courses in biology and will be engaged in scientific research in collaboration with me in the Department of Biology. Specifically, she will be conducting research in the area of molecular genetics in mechanisms of gene expression.

Dr. Brown is eminently qualified for her work here in a specialty occupation. She holds a Ph.D. from the University of Blue where she was voted the outstanding graduate student in her department. She has a significant list of publications in professional journals and has recently been invited to present a paper at the annual conference of the Association of Cell Biologists.

The salary rate offered to Dr. Brown for her services is at least the actual wage being paid to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher.

Dr. Brown's employment will not adversely affect the working conditions of workers similarly employed in the department. Our department agrees to pay the reasonable cost of return transportation to Dr. Brown's last place of foreign residence should her employment in our department be terminated by our department before the end of her authorized period of H-1B employment.

We look forward to hiring Dr. Brown as Assistant Professor in the Department of Biology.

(printed name and signature of Dean, College or School of _____) date

Carol Mack, Vice Provost for Administration and Planning date

Dawn White, Director
International Faculty Services
Portland State University
632 SW Hall St, Room 216
Portland OR 97207-0751
Telephone: 503/725-5075
Fax: 503/725-5320

H-1B VISA PROSPECTIVE EMPLOYEE FORM
(to be filled out by prospective employee)

1. Name _____

2. Date of birth: (month/day/year) _____ 3a. City and province of birth _____

3b. Country of birth _____ 3c. Country of citizenship _____

4. Social Security number _____ 5. A# (if any) _____

6. Do you have a valid passport? _____ 7. What country issued your passport? _____

8. Expiration date of your passport _____ 9. E-mail address _____

10. Has PSU ever filed an immigrant petition for you or dependent family member(s)? _____

11. Are you bringing dependents with you? _____ If yes, please list names of dependents and relationships to you. _____

12. Are you requesting H-4 Visa status for your dependents? _____ If yes, how many dependents? _____

13. Have you been in H-1B status in the past seven years? _____ If yes, give dates and names of employers on a separate piece of paper.

14. Have you ever been denied H-1B status previously? _____ If yes, give details on a separate piece of paper.

15. Are you in exclusion or deportation proceedings? _____ If yes, please explain on a separate piece of paper.

16. Please complete 16A or 16B, **even if you are in the U.S.**

A. Location of U.S. embassy or consulate outside the U.S. where you will obtain an H-1B visa if you are outside the U.S. or if the requested extension of stay or change of status cannot be granted.

City _____ Country _____

B. (Canadians citizens, complete this item instead of #16A): Port of entry to the U.S.:

City _____ State _____

17. H-1B applicant's address outside the U.S. _____

If the H-1 applicant is in the U.S., complete # 17 - 20

18. Date of most recent arrival in the U.S. (month/day/year) _____

19. I-94 number (from the small white card stapled into passport) _____

20. Current non-immigrant status (e.g. J-1, F-1) _____

21. If F-1 and on optional practical training, please provide dates of authorized employment as indicated on Employment Authorization Document (EAD) _____

Person preparing this form (type or print) _____
first name last name

signature date

Home address _____

Telephone _____

Please return this form to the department so that it can be submitted with other documents listed on the H-1B visa checklist.