

H-1B Petition Instructions for Departments & International Faculty/Staff

International Services (IS) is responsible for the advising and processing of the H-1B visa status for full-time tenure-track faculty and full time permanent staff and managers. The information listed below must be submitted to IS well in advance of the date the employee is expected to begin work in H-1B status. Approval of the H-1B visa status must be obtained before the employee can be placed on Montclair State University Payroll unless the employee possesses another status that allows employment while the H-1B petition is pending.

All the information must be submitted to:

Aditi Patel, Assistant Director
Montclair State University
International Services
22 Normal Avenue
Montclair, NJ 07043
973-655-7735 phone
973-655-7726 fax
patelad@mail.montclair.edu

H-1B Processing

Preparation and filing of the H-1B is a three-step process:

Step 1: Applicant submits the H-1B application package to IS (this includes all the required forms and supporting documents from the hiring department and the applicant).

Step 2: IS will file a Labor Condition Application (LCA) to the Department of Labor (DOL) to affirm that MSU will meet the prevailing wage and other legal requirements of the H-1B.

Step 3: After receiving the LCA certification, IS will file the H-1B petition with United States Citizenship and Immigration Services (USCIS). The hiring department and applicant will be notified when IS receives the approval notice from immigration.

The IS will be responsible for preparing and mailing the completed H-1B petition to the United States Citizenship and Immigration Service (USCIS). USCIS is an agency within the US Department of Homeland Security.

Copies of the completed petition will be kept on file in IS and a copy of the petition will be given to the Faculty/staff candidate for their own record-keeping purposes.

The faculty/staff candidate may not begin work at Montclair State University until USCIS approves the H-1B status or unless they currently have another employment authorization that will cover their legal employment until the H-1B status is approved.

PART I: HIRING DEPARTMENT INFORMATION AND RESPONSIBILITY

Basic H-1B Visa Classification Information

- This status is used to employ professionals temporarily for periods of up to six years.
- Each H-1B1 petition may be for a period of time up to three years; however, an employer may not sponsor an international for a period of time that exceeds guaranteed funding. If funding can only be guaranteed for one year at a time, then the international may extend his/her status each year (up to a total of six years).
- The position must require a minimum of a bachelor's degree and the international must possess at least a bachelor's degree or its equivalent in the field in which he/she is seeking employment. Internationals with an equivalency in work experience may be required to provide substantial documentation. The international must possess all of the standard qualifications for the position.
- The H-1B1 status is employer specific; therefore, the international may only work for the employer who sponsors his/her status. However, the international may have more than one H-1B1 visa and work for more than one employer as long as each employer has an approved petition on his/her behalf.
- The H-1B1 visa status recognizes dual intent. This means that the international may apply for permanent residency while in H-1B1 status; however, he/she is strongly urged to make the IS aware of his/her plans so that we may advise the international properly.
- The international will be given a copy of his/her approved Labor Condition Application when he/she receives all of the H-1B1 paperwork upon approval. This form shows the international's actual wage (what he/she is actually being paid) and the prevailing wage (what the State of New Jersey has determined to be the average wage for his/her position). If the international is not receiving the actual wage listed on the Labor Condition Application, he/she should contact the IS immediately.

Who Qualifies for an H-1B Visa?

The position offered must qualify as a "specialty occupation," which is an occupation that requires "theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation," OR A baccalaureate or higher degree (or its equivalent) in a specific academic discipline as the standard minimum requirement for entry into that particular position.

Funding Information

The H-1B1 status may be sponsored for up to three years at a time; however, the University may not sponsor a status for a period of time longer than the salary can be guaranteed. According to Federal Regulations, the Employer is obligated to pay "... ***at least the Actual Wage level paid by the employer 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.***"

[20 CFR 730]

Department of Labor Requirements

The Hiring Department must certify that the following conditions have been met:

- The employment of the H-1B1 nonimmigrant will not adversely affect the working conditions of employees similarly employed in the area.
- On the date that the application to the Department of Labor is signed and submitted, there is not a strike, lockout, or work stoppage in a course of a labor dispute in the occupation in which H-1B1 non-immigrant will be employed at the place of employment. If such a strike or lockout occurs after this application is submitted, we will notify ETA within 3 days of the occurrence of such a strike or lockout and the application will not be used in support of a petition filing with USCIS for a H-1B1 nonimmigrant to work in the same occupation at the place of employment until ETA determines the strike or lockout has ceased.
- A copy of the application has been, or will be, provided to each H-1B1 nonimmigrant employed pursuant to this application, and, as of this date, notice of this application has been provided to workers employed in the occupation in which the H-1B1 non-immigrant will be employed.
- Where there is collective bargaining agreement covering the occupational classification in which the H-1B nonimmigrant will be employed, the LCA must be given to the authorized bargaining representative and the notice must conform to the following requirements. [20 CFR 655.734 (a) (1) (i)]

International Services will make sure the following conditions have been met:

Written notice which will include the following:

- Number of H-1B non-immigrants the employer is seeking to employ
- Occupational classification in which the H-1B non-immigrants will be employed
- Wages offered
- Period of employment
- Location(s) at which the H-1B non-immigrants will be employed
- **Verbatim Statement:** *“Complaints alleging misrepresentation of material facts in the labor condition application and /or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour division of the United States Department of Labor.”*

Violations and Penalties Under Federal Regulations

FILING AN LCA (LABOR CONDITION APPLICATION) WHICH MISREPRESENTS A MATERIAL FACT

- Civil Money Penalty up to \$1,000/violation.
- Notice to USCIS & ETA regarding debarment from H-1B1 program.
- Any other actions the Department of Labor deems appropriate.
- Up to \$10,000 fine and/or 5 years imprisonment [18 U.S.C. 1000].

FAILURE TO PAY REQUIRED WAGES

- Back wages to H-1B1 employee.
- Civil Money Penalty up to \$1,000/violation.
- Notice to USCIS & ETA regarding debarment from H-1B1 program.
- Any other actions the Department of Labor deems appropriate.

FAILURE TO PROVIDE REQUIRED WORKING CONDITIONS

- Civil Money Penalty up to \$1,000/violation.
- Notice to USCIS & ETA regarding debarment from H-1B1 program.
- Any other actions the Department of Labor deems appropriate.

NOTE: Willful misrepresentation of a material fact on the LCA will lead to civil monetary penalties ranging from \$5,000-\$35,000 and possible debarment from the H-1B1 program for a minimum of 2-3 years.

Other violations such as filing an LCA during a strike/lockout, failure to provide required notice, failure to be specific on the LCA, failure to make available for public examination the LCA and necessary documentation, failure to retain documentation as required, and failure to otherwise comply with LCA regulations may result in:

- Civil Money Penalty up to \$1,000/violation.
- Any other actions the Department of Labor deems appropriate.

IMPORTANT NOTE

It is extremely important that the hiring official does not misrepresent any fact or situational development. It is the responsibility of each hiring official to notify the IS if any conditions of employment change at any time so that we may notify the proper government agency. In the event that the Department of Labor audits Montclair State University, the IS is not responsible for any misinformation provided by hiring department sources.

Filing Fees

The hiring department is responsible for paying all filing fees with the exception of the fee for Form I-539. The \$500 Fraud Prevention and Detection fee is **not** required to extend H-1B employment at MSU. All fees must be paid by separate checks made payable to "Department of Homeland Security."

Fees (as applicable):

- **\$325 for Form I-129, petition for H-1B worker - *paid by Hiring Department***
- **\$500 for Fraud Prevention and Detection Fee - *initial H-1B at MSU only - paid by Hiring Department***
- **\$1,225 for Form I-907, Premium Processing Fee – *Optional – paid by Hiring Department (see note below)***
- **\$290 for Form I-539, application for H-4 dependents - *if applicable - paid by the Applicant***

Premium Processing:

For an additional \$1,225 the USCIS will process and H-1B petition within 15 days of receipt, instead of the current 90 to 120 days. The \$1,225 fee guarantees that USCIS will either approve or deny the case within 15 days, or send a request for additional information.

Processing Times

To allow for sufficient IS processing time and government processing time, applications must be sent to IS four to six months in advance of the hire date or extension date.

Usually within four weeks of receiving the **complete** request package, including the checks and all supporting documents, IS will submit the H-1B petition to USCIS. If a complete package is not submitted to IS in a timely manner, IS cannot guarantee that the application will be processed and/or filed in a timely manner or at the requested time. Please note IS processing times may vary depending on volume. Under regular processing, USCIS usually takes 3-6 months to adjudicate the petition. A department may request USCIS to process an H-1B petition under premium processing.

Required Documents from the Department

Hiring departments must review and submit the required department forms and supporting documents listed below to the applicant. The applicant will then submit the department documents and applicant forms and supporting documents as one **complete** package to IS. Please save a copy of materials and forms submitted to IS for your records.

- Completed Department Information for Prevailing Wage request Form
- Request Check(s) from Accounting Office (IS staff member will pick up checks from Accounting Office) payable to “Department of Homeland Security” (See instructions on Filing Fees).
 - \$325
 - \$500
 - \$1,225

PLEASE DO NOT STAPLE ANY ITEMS TOGETHER

Minimum education required for this position: ___ B.A./B.S. ___ M.A./M.S. ___ Ph.D

Field of degree required for this position: _____

Number of individual the H-1B employee will supervise (excluding student workers): _____

Request FEDEX Account Number

In order to avoid any delays and guarantee arrival of the H-1B1 petition at the USCIS for adjudication, the department must provide us with a FedEx account number that will be used to cover the costs. IS will not send the petition to USCIS unless we have received the FedEx account number.

IMPORTANT INSTRUCTIONS: Please provide your FedEx account number and return this form to IS with other application materials. Upon submission of the petition to the USCIS, IS will email the confirmation along with the FedEx tracking number for your reference.

If you have any questions, please do not hesitate to contact us.

FedEx Account Number: _____

Department: _____

Department Contact: _____ Phone: _____

Email to send FedEx confirmation: _____

Name of the H-1B Applicant: _____

Declaration of MSU College/School

Name of H-1B Applicant: _____
Last Name First Name Middle Name

The hiring college/school will comply with the following regulations during the H-1B1 application process and during the employment of the above-named foreign national under the terms of H-1B1 status.

NOTE: Every box must be checked in order to indicate that the employer will comply with each statement.

- _____ Return airfare to home country will be paid to the Alien (employee) if he/she is dismissed prior to the end date of the H-1B status granted by USCIS.
- _____ H-1B1 nonimmigrants will be paid the actual wage level to those 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.
- _____ The employment of H-1B1 nonimmigrants will not adversely affect the working conditions of workers similarly employed in the area of intended employment.
- _____ On the date that this application is signed and submitted, there is not a strike, lockout or work stoppage in the course of a labor dispute in the occupation in which the H-1B1 nonimmigrants will be employed at the place of employment.
- _____ The department will be responsible to notify IS of any substantial changes in the H-1B visa holder’s employment (terms of employment, place of employment, transfer to another university department, significant changes in duties, salary increase over 25% or more, termination, resignation, etc.).

Please check the option that applies:

- _____ The Department performs sponsored research, and that research is “fundamental research.” “Fundamental research” is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community.
- _____ The Department is engaging in proprietary research, the results of which are restricted for proprietary and/or specific national security reasons. **The Department has attached a copy of the Department or University’s export license.**
- _____ The Department is not performing scientific research.

It is the responsibility of the department to inform IS immediately. Federal regulations require that USCIS be notified prior to any changes in employment taking place.

SIGNATURE OF DEPARTMENT HIRING AUTHORITY

“Pursuant to 28 USC 1746, I declare under penalty of perjury that the information provided on this form is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and that I will make this application, supporting documentation, and other records, files, and documents available to officials of the Department of Labor, upon their request, during any investigation under this application or the Immigration and Nationality Act.”

Name of Hiring Authority

Title of Hiring Authority

Signature

Date

Sample Invoice to Request Check(s)

Please use the following sample invoice to request check(s) once the online check requisition is complete and you have received the requisition number. Checks will not be processed until this invoice is sent to the Accounting Office by the requesting department. Print the invoice on letterhead and send it to the Accounting Office, 855 Valley Road. Once the check(s) is ready, IS will be notified to pick up the checks.

Date:

Check to cover Fee for H-1B processing to:

**US Department of Homeland Security
24000 Avila Road
USCIS California Service Center
Room 2312
Laguna Niguel, CA 92677**

Petition for H-1B for _____ *(include full name of H-1B beneficiary, and department)*

Amount: _____ *(separate checks required for each fee)*

Name of Department Head: _____

Department Name: _____

Account # and object code: _____ S# _____

Signature of Department Fiscal Agent

Please do not mail check(s). Call Aditi Patel at International Services at X7735 to pick up the check(s).

PART II: APPLICANT INFORMATION AND RESPONSIBILITY

Applicant H-1B Checklist

The applicant must obtain the required forms and supporting documents from the hiring department and then submit the required applicant forms and documents (outlined below) together with the documents from the department as **one complete** package to IS

<u>NEW APPLICANTS IN THE U.S</u>	<u>NEW APPLICANTS OUTSIDE OF THE U.S</u>	<u>EXTENSIONS ALREADY AT MSU AND TRANSFERS WORKING ELSEWHERE IN THE U.S. & SEEKING TO START AT MSU</u>
<ul style="list-style-type: none"> Applicant Information Form <p>THREE COPIES OF:</p> <ul style="list-style-type: none"> Diplomas* and English translations. Transcripts and English translations. I-94 card (front &back). Passport ID & visa stamp page. CV. <p><i>*If your degree was awarded by an educational institution outside of the United States, you MUST submit a professional credential evaluation stating the U.S. equivalent of your degree. SEE BELOW for evaluation services</i></p> <p>If Currently in J-1/J-2 Status: <u>Three copies of:</u></p> <ul style="list-style-type: none"> All IAP-66/DS-2019 Forms. Home residency waiver Form I-612 (if applicable). Marriage certificate and translation if J-2 status. <p>If Currently in F-1/F-2 Status: <u>Three copies of:</u></p> <ul style="list-style-type: none"> All I-20 Forms (including spouse Forms if F-2). EAD card (if applicable). Marriage certificate and translation if F-2. <p>APPLICATION FEE: \$320.00 Payable to "U.S. Department of Homeland Security" (PAID by MSU)</p> <p><u>Completed by dependents (if in the U.S.):</u></p> <ul style="list-style-type: none"> Form I-539. USCIS I-539 Application \$290.00 fee. Payable to "U.S. Department of Homeland Security" (PAID by the APPLICANT) Proof of dependent relationship to applicant. (birth/marriage certificates) Copies of dependent(s)' I-94 card(s) (front &back). Passport ID & visa stamp page. 	<ul style="list-style-type: none"> Applicant Information Form <p>THREE COPIES OF:</p> <ul style="list-style-type: none"> Diplomas* and English translations. Transcripts and English translations. Passport ID. CV. Any former immigration documents that you obtained from previous stays in the U.S. <p><i>*If your degree was awarded by an educational institution outside of the United States, you MUST submit a professional credential evaluation stating the U.S. equivalent of your degree. SEE BELOW for evaluation services</i></p> <p>APPLICATION FEE: \$320.00 Payable to "U.S. Department of Homeland Security." (PAID by MSU)</p> <p>NOTE: Please contact the U.S. Embassy/Consulate where you will be getting the visa and find out what documentation is required at the time of application and how far in advance you must make an appointment, if at all. <i>(Please note that Canadian citizens are exempt from visa requirements.)</i></p>	<ul style="list-style-type: none"> Applicant Information Form <p>THREE COPIES OF:</p> <ul style="list-style-type: none"> All previous Forms I-797. Diplomas* and English translations. Transcripts and English translations. I-94 card (front &back). Passport ID & visa stamp page. CV. Last 4 Pay stubs from current employer <p><i>*If your degree was awarded by an educational institution outside of the United States, you MUST submit a professional credential evaluation stating the U.S. equivalent of your degree. SEE BELOW for evaluation services.</i></p> <p>APPLICATION FEE: \$320.00 Payable to "U.S. Department of Homeland Security." (PAID by MSU)</p> <p><u>Completed by dependents:</u></p> <ul style="list-style-type: none"> Form I-539. USCIS I-539 Application All previous Forms I-797. \$290.00 fee. Payable to "U.S. Department of Homeland Security" (PAID by the APPLICANT) Proof of dependent relationship to applicant.(birth/marriage certificates) Copies of dependent(s)' I-94 card(s) (front &back). Passport ID & visa stamp page.

Dependent Information for H-4 Visa (if applicable)

Name: _____
Last Name *First Name* *Middle Name*

Date of Birth: ____ / ____ / ____ Gender: ____ Male ____ Female Relationship (e.g. Spouse, Child): _____
mm dd yyyy

City of Birth: _____ Province of Birth: _____

Country of Birth: _____ Country of Citizenship: _____

Current Non-immigrant Status: _____ Expiration Date of current status: ____ / ____ / ____
mm dd yyyy

Initial Arrival Date in U.S.: ____ / ____ / ____ Most Recent Arrival Date in U.S.: ____ / ____ / ____
mm dd yyyy mm dd yyyy

I-94 Number (white card in passport): _____

Name: _____
Last Name *First Name* *Middle Name*

Date of Birth: ____ / ____ / ____ Gender: ____ Male ____ Female Relationship (e.g. Spouse, Child): _____
mm dd yyyy

City of Birth: _____ Province of Birth: _____

Country of Birth: _____ Country of Citizenship: _____

Current Non-immigrant Status: _____ Expiration Date of current status: ____ / ____ / ____
mm dd yyyy

Initial Arrival Date in U.S.: ____ / ____ / ____ Most Recent Arrival Date in U.S.: ____ / ____ / ____
mm dd yyyy mm dd yyyy

I-94 Number (white card in passport): _____

Name: _____
Last Name *First Name* *Middle Name*

Date of Birth: ____ / ____ / ____ Gender: ____ Male ____ Female Relationship (e.g. Spouse, Child): _____
mm dd yyyy

City of Birth: _____ Province of Birth: _____

Country of Birth: _____ Country of Citizenship: _____

Current Non-immigrant Status: _____ Expiration Date of current status: ____ / ____ / ____
mm dd yyyy

Initial Arrival Date in U.S.: ____ / ____ / ____ Most Recent Arrival Date in U.S.: ____ / ____ / ____
mm dd yyyy mm dd yyyy

I-94 Number (white card in passport): _____

H-1B Petition Information

Have you been previously granted status as an H-1B nonimmigrant in the past 6 years? ____ Yes ____ No

Have you ever been in J-1 status? ____ Yes ____ No

If yes, have you ever been subject to the J two year home country residency requirement? ____ Yes ____ No

Have you filed an application for U.S. Permanent Resident Status (such as Form I-140, I-485, I-130)? ____ Yes ____ No
(Please provide details about the status of your application. If you file for Permanent Residency application without our knowledge and problems arise, we are not responsible for complications that may occur since we were unable to properly advise you.)

Are you or your dependents in exclusion or deportation hearings? ____ Yes ____ No

List the City and Country of the US Embassy or Consulate where you would plan to apply for an H-1B visa (or port of entry if Canadian Citizen) **even if** you are currently in the US with no expected travel plans:

City: _____ Country: _____

Academic/Employment Information

Highest Degree Earned (e.g. BS, MS, PhD): _____ Date Degree Earned: ____ / ____ / ____
mm dd yyyy

Field of Study: _____

Have you earned a Master's or higher degree from a U.S. Institution of Higher Education? ____ Yes ____ No

If yes, Name of the Institution: _____

Address: _____

Present Occupation: _____ Years of experience in this field: _____

Please list the name of employer, dates, position, and visa classification for prior work experience in the U.S.

Employer Name	Dates of Employment	Position	Visa Classification (e.g. F-1, J-1, H-1B)
	From: To:		
	From: To:		
	From: To:		

Certification (signed by the Applicant)

I hereby declare, under penalty of perjury, that copies of documents submitted are exact copies of unaltered original documents and I understand that I may be required to submit original documents to an immigration or consular officer at a later date. I understand that the above information is accurate and that I have read and understand the H-1B employment information.

Signature: _____ Date: _____

Print Name: _____