Comprehensive 2026 H-1B Visa Guide

How to Navigate a More Challenging H-1B Landscape

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INTERNATIONAL LEGAL AND BUSINESS SERVICES GROUP

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After several years of a more relaxed immigration landscape, U.S. policy has shifted back to stricter scrutiny and increased enforcement actions. The H-1B program has been a major focus in the past and we can expect that it will again be under a microscope. Under the current administration, the immigration agencies (which include USCIS, ICE, and CBP) have been instructed to strictly enforce immigration law and combat fraud. The H-1B program will not be an exception.

On January 17, 2025, a new H-1B rule went into effect which formally codified many existing USCIS adjudicatory practices. The rule focuses on strengthening the definition of specialty occupation, providing greater power to USCIS to deny/revoke approvals for employers who do not cooperate during site visits, as well as streamlining approvals for extension petitions where deference to a past decision is warranted. The rule also eliminates any ability for employers to file H-1B petitions for speculative work, requiring employers to prove there is a bona fide specialty occupation available for the beneficiary as of the requested start date. In other words, for IT consulting companies, there must be a project in place at the time of filing. While the rule itself is not a major departure from existing practices, we can expect increased scrutiny for all H-1B petitions in light of the current administration's hardline stance on immigration.

This will mean that H-1B employers and employees alike should anticipate a higher likelihood of inquiries from USCIS (through requests for evidence, notices of intent to deny/revoke, etc.), increased compliance checks through FDNS site visits, greater challenges during visa stamping at the consulates, and increased scrutiny during initial entry or reentry at U.S. ports of entry.

This guide contains comprehensive recommendations for H-1B employers and employees, to help navigate this more challenging immigration landscape and ensure the best possible outcomes.

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H-1B Petition Considerations – Filing Stage

Documentation Requirements

We can expect increased scrutiny during the adjudication of H-1B petitions for new employment, change of employers, and amendment petitions. While USCIS will grant deference to prior approvals at the H-1B extension stage (meaning documentary requirements will be more relaxed), all other petitions will be subject to a higher level of review.

Because the new H-1B rule requires employers to show there is a bona fide specialty occupation position available, it will be increasingly important for employers to provide concrete evidence of the work to be performed. For third-party placements, this will mean providing a detailed end client letter confirming the job title, job duties, and degree requirement, as well as the contracts between all parties involved in the project. Speculative work will not be sufficient – there must be a project in place, and it must be well documented. It is important to note that if the end client or project documentation confirms a shorter duration than the requested validity period, the H-1B approval will likely be shortened to match the end date confirmed in the documentation.

The new rule is clear that for third party placements, it is the end client's requirements for the position that will establish if it is a specialty occupation, not the petitioner's requirements. This means H-1B employers will need to provide evidence that the end client requires a bachelor's degree or higher in a specific specialty directly related to the position. This can be done through an end client letter or the end client's job postings, where available. Without this evidence, USCIS may find a specialty occupation has not been proven.

Finally, when filing H-1B amendments or transfers, USCIS will evaluate whether the H-1B employee has been maintaining valid H-1B status. It is imperative that paystubs for the prior H-1B period are provided, which reflect the LCA wages were paid each pay period.

LCA Considerations

USCIS is also going to scrutinize wage levels, a practice we have seen increase over the past few months. USCIS will be targeting employers it believes are intentionally using weaker SOC codes or selecting wage levels below what the actual position requires in an effort to lower the required wage rate.

To this end, USCIS is now requiring SOC code and wage level related information to be provided at both the registration (for H1B new cap-subject cases) and filing stage. When filing the H-1B petition, employers must now justify the wage level selected in the LCA. The I-129 form asks questions regarding the experience required, the required degree and fields of study, whether the position has any supervisory job duties, and whether the job requires special skills. If the information provided for these questions does not align with the selected wage level in the LCA, USCIS will have the authority to issue a Request for Evidence or even denial notice, challenging the validity of the LCA. Wage level calculations must be carefully conducted prior to filing the LCA, taking the actual requirements of the position into careful consideration. Employers will also need to be mindful for third-party placements that if the end client is contacted during a site visit and confirms different requirements (i.e. states the position requires 5 years' experience where you indicated 2 years' in the form), a Notice of Intent to Deny/Revoke could be issued on the basis the LCA was not properly filed in the correct wage level. The bottom line is that the wage level selected must align to the requirements of the actual position, it cannot be decided based on desired salary alone.

Both the DOL and USCIS rules require an H-1B employer to select the SOC code that best aligns with the position. Where a position entails job duties which may fall under more than one code, the DOL requires the employer to select the code with the highest wages. What this means is that if the position is a software developer role, employers must use the software developer SOC code. While the computer programming code may allow lower wages, if the role is truly software development, you must use the software developer code. The O*NET was recently updated to downgrade several IT-related SOC codes from Job Zone Four to Job Zone Three, which means they cannot be used to support a specialty occupation. As such, there are now limited SOC codes which can be used to support IT-related positions. It is critical employers are consistently choosing the strongest codes. There has been a sharp increase in RFEs targeting this specific issue and employers should be on notice.

In the past, there have been instances where USCIS found publicly available job postings from the end client to confirm the job duties and position requirements, subsequently issuing RFEs or denial notices where inconsistencies were found. We can expect a similar level of scrutiny under the current administration – USCIS may consult publicly available sources and investigate outside the actual petition documents submitted. Thus, it is imperative that at the filing stage, the SOC code and wage level are carefully selected to ensure the LCA is properly certified.

Beneficiary-Owners & Entrepreneurs

While the new H-1B rule largely codified existing adjudicatory practices, one notable change is that an H-1B employer may now include a business where the H-1B employee holds a controlling interest. In other words, entrepreneurs will now be permitted to sponsor their own H-1B petition through the company they own, without facing challenges related to the employer-employee relationship requirement. A controlling interest means owning more than 50 percent of the company and holding majority voting rights.

Under the new rule, the H-1B beneficiary-owner must spend more than half of their time performing specialty occupation duties, but they are also permitted to perform duties related to owning and directing the business.

For H-1B petitions filed for beneficiary-owners, it will be very important to include a detailed job description which breaks down the job duties with a percentage of time for each duty, showing that the ownership duties are incidental, and that the majority of the work being performed is still specialty occupation work. The ownership stake must be disclosed in the form and the initial approval and first extension approval will be limited to 18 months only, rather than the usual 36 months. This will allow USCIS to more frequently evaluate and ensure complete program compliance.

For owners of IT consulting companies, filing an H-1B petition for a beneficiary-owner may be more nuanced, since you will be required to show what specialty occupation work the beneficiary-owner will be performing. If the company does not produce a product, but instead provides consulting services, this will entail providing evidence of the IT project to which the beneficiary-owner is assigned (documented with letters and contracts) and explaining how the beneficiary-owner completes their specialty occupation duties while also directing the business. The feasibility of this approach will vary case-by-case and entrepreneurs interested in filing a beneficiary-owner petition should consult with an experienced immigration attorney on the best path forward.

H-1B Petitions - Material Changes After Approval

The rules regarding H-1B amendments remain unchanged, but H-1B employer and employees should be on high alert and conservatively file H-1B amendments any time there is a material change in employment. USCIS updated Form I-129, Petition for Nonimmigrant Workers, prior to the start of the FY2027 H-1B Cap period. This is important because any material changes after approval require the filing of Form I-129 by employers.

The new petition mandates employers give additional information about the minimum qualifications for the sponsored job position. This includes the minimum education and work experience, the focus field, and whether the position in question includes supervisory duties. USCIS will use this information to only approve sponsorship or material changes but also determine the prevailing wage level for the position. It's incredibly important employers keep this information consistent across all submitted documents.

Employers that haven't filed an I-129 must submit the newest version as soon as possible. USCIS will only accept the updated version starting on April 1, 2026.
The main two takeaways are that employers must disclose more information on the I-129 whenever registering material changes, and the importance of keeping said information consistent across documentation. It's also important that employers and employees stay vigilant because the government can issue vital H-1B processing updates with little to no prior notification.

H-1B Compliance – Responding to Site Visits

We have seen a noticeable increase in Site Visits, both announced and unannounced, over the course of the past year. It's important that employers take proactive steps to ensure compliance. In September 2025, the Department of Labor (DOL) announced Project Firewall. Project Firewall is an enforcement initiative targeting H-1B program misuse and fraud. Following the implementation of Project Firewall, immigration authorities are conducting greater unannounced site visits. Previously, DOL audits were triggered by complaints from aggrieved employees. Subsequently, the Secretary of Labor can initiate investigations based on reasonable cause alone. Project Firewall emphasizes inter agency collaboration, with the DOL, Department of Justice (DOJ), and Department of Homeland Security (DHS) working together to identify violations. Therefore, immigration agencies will share information. If an H-1B filed with USCIS reveals some violation or misuse of the H-1B program, U.S. Citizenship and Immigration Services (USCIS) can now refer the company over to the DOL for a formal investigation.

Considering these increased enforcement initiatives, H-1B employers should treat the possibility of either a DOL or USCIS site visit as a routine compliance risk.

Common violations to look out for include the following:

- Supplying incorrect or otherwise false information on the Labor Condition Application (LCA).
- Failing to pay H-1B workers the higher of the prevailing or actual wage.
- Failing to pay H-1B workers for time off due to a decision by the employer.
- Making deductions from the H-1B worker's wage that caused the wages to fall below the required amount.
- Not providing H-1B workers with working conditions on the same basis as U.S. workers, or otherwise the employment of H-1B workers adversely affects the working conditions of U.S. workers.
- Failing to provide notice of the intentions of hiring an H-1B worker or failure to provide a copy of the LCA.
- Requiring H-1B workers to pay the ACWIA fee.
- Retaliating or otherwise discriminating against an employee, former employee, or job applicant.
- Failing to maintain and make available for the LCA and necessary documents for public examination.

Employers decrease their chances of falling out of compliance by maintaining strong Public Access Files (PAFs) with all the updated employment information, valid pay practices that always meet or exceed wage requirements, consistent immigration and HR records, properly training HR managers to deal with immigration authorities, periodically reviewing H-1B employee records, job duties, and work locations all before immigration authorities arrive.

The main takeaway for employers is to always be vigilant and prepare for site visits by immigration authorities. Being proactive now saves time and energy spent dealing with immigration authorities if they fall out of compliance. You should always consult with counsel during a site visit, to make sure your answers align with the filed petition and that you understand the implications of each question and its answer.

H-1B Visa Processing Abroad & Travel Considerations

Under the current administration, H-1B holders and H-1B hopefuls alike should anticipate increased scrutiny at both the consulate stage for visa stamping and during initial entry or reentry at U.S. ports of entry. Given the current immigration landscape, it's best current and prospective beneficiaries to refrain from traveling outside the country unless necessary. If unavoidable, individuals that must travel abroad can mitigate any risk by:

- Verifying their current legal status and approval documents before departure.
- Ensuring they carry the correct, most recent approval notice to present with their valid nonimmigrant visa upon entry.
- Proactively present all necessary supporting documents based on the individual visa category to CBP officers upon arrival. (For example, an H-1B visa holder should present an employer verification letter, end client letter, evidence of the project, and recent paystubs. An F-1 visa holder should present their most recent I-20, EAD (if applicable), employer letter and paystubs (if on OPT or CPT))
- Double-checking their I-94 upon entry following any travel to confirm its accuracy.
- Consult with experienced immigration counsel before traveling individual advice, specific to your particular situation.

H-1B visa holders can also expect increased scrutiny during initial entry or reentry. H-1B holders should anticipate they will be asked for their documentation, endure often intense questioning, and that CBP may call their employer/end client from the airport to confirm they are expected. H-1B beneficiaries should NOT travel abroad unless necessary. Preparing all documentation beforehand is paramount for individuals that do travel abroad so that they're not stopped and stopped and questioned by immigration authorities upon their return.

Final Thoughts

The rule changes for the H-1B visa in 2026 are dramatic, from the implementation of the $100,000 H-1B fee to the new weighted selection process. Given the increasingly strict immigration landscape, the cost of non-compliance has become more severe too. It's important that both employers and employees remain vigilant to changes in the H-1B landscape, especially since the government can implement said changes with little prior notice. Seeking a professional council is the best way employers and employees can ensure that they never miss any H-1B in the future.

At ILBSG, we have years of experience navigating challenging immigration landscapes under various administrations and we are prepared to face any obstacles that arise with strategic solutions, careful advice, and a focus on our clients' continued success in this space. We're here to help.

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