



Comprehensive Guide For the H-1B Visa

Filing an H-1B petition, whether it's your first time or you are an experienced petitioner, can be overwhelming, to say the least. With constantly changing rules and various legal requirements from multiple federal agencies, understanding the process is crucial to successfully navigate the H-1B program.

This guide breaks down everything you need to know about filing an H-1B petition, from start to finish.

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About Us

ILBSG is a law firm focusing on U.S. Immigration and Global Mobility Services.

Our business is to understand yours - and your challenges. We are trusted for our successful representations, primarily in immigration, international arbitration, and contracts. Our clients consistently rate us highly, noting our strategic insights, attention to detail, and personal attentiveness.

With proprietary technology central to our processes, we deliver an efficient and personalized legal solution, enabling clients to access our services anytime, anywhere. Clients also see the status of each case anytime, in real-time.

Our organization is MSDC-certified minority-owned, ISO-9001 Quality Management System certified, and our attorneys are licensed to practice in the states of NY, CA, and IL. We are also licensed in the U.S. District Court for the Northern District of Illinois, U.S. District Court for the Southern District of California, U.S. Court of International Trade, U.S. Tax Court, and multiple foreign jurisdictions.

Our team speaks 12 languages and employs high levels of cultural sensitivity, always focused on the experience of the individual.

Contact us to ensure you Get the Right Advice ®



Step 1: Filing the LCA

The first step to filing an H-1B petition is obtaining a certified Labor Condition Application (LCA) from the Department of Labor. In order to file the LCA, you must determine the position title, the appropriate Standard Occupation Code (SOC), the work location(s), and the required wages based on the work location(s).

According to Department of Labor regulations, the required wage rate must be the higher of the actual wage rate (the rate the employer pays to all other individuals with similar experience and qualifications who are performing the same job), or the prevailing wage (a wage that is predominantly paid to workers in the same occupational classification in the area of intended employment at the time the application is filed).

When working with an immigration attorney at ILBSG, your attorney will advise you on the appropriate title and SOC code for the proposed position. This will ensure the position meets the requirements of a specialty occupation, pursuant to USCIS's H-1B regulations. A specialty occupation is a position that requires a bachelor's degree or higher in a specific area of study for entry into the position. Your attorney will work with you to ensure the job title and SOC code are the strongest possible combination to ensure approval.

Once the title and SOC code have been decided, your attorney will then access the prevailing wages from the relevant wage source and advise you of the appropriate wage level based on the position's requirements. Wage levels are determined by the position's requirements, not the beneficiary's qualifications or level of experience. There are four wage levels available when filing an LCA.



Step 1: Filing the LCA (continued)

A breakdown of the wage levels is provided below:

- **Wage Level I:** (Entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited if any, exercise of judgment.
 - Examples: Research fellow, apprenticeship, internships, or worker in training positions.
- **Wage Level II:** (Qualified) wage rates are assigned to job offers for qualified people who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment.
 - Examples: Positions that require a certain number of years of experience and/or level of education.
- **Wage Level III:** (Experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills, or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff.
 - Examples: Positions that require a number of years of experience or education degrees that are the higher ranked indicated in the O*NET Job Zones.
- **Wage Level IV:** (Fully Competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. These employees receive only technical guidance, and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations.
 - Examples: Positions that have management and/or supervisory responsibilities.

Step 1: Filing the LCA (continued)

Once the prevailing wages have been determined, it will be compared against the actual wages at your company. Whichever wage is higher will then be used to file the LCA. If there is more than one work location, the higher wage of the two locations will be used to file the LCA.

The LCA is filed electronically using the DOL's Foreign Labor Application Gateway (FLAG) system. If it is your company's first time filing an LCA, your company will first have to complete FEIN verification with the DOL, which typically takes 2-5 days. ILBSG will obtain the required documentation from your company (any IRS document containing your company's FEIN number) and submit it to the DOL on your behalf to complete this process. Once your FEIN has been verified, the LCA can be submitted on the FLAG website. ILBSG will file the LCA on behalf of your company. An LCA takes 7 days to certify once filed.



Step 2: Preparing the I-129 Petition

Once the LCA is certified, your immigration attorney will prepare the required forms for the H-1B petition, which includes the G-28 form and the I-129 form. The G-28 is the form that notifies USCIS of your attorney's representation. The I-129 is the H-1B petition form. Using the datasheets completed by your company and the beneficiary during the intake process, the immigration attorney will fill out the forms with all required information. Once completed, your immigration attorney will send your company the G-28, I-129, certified LCA, and a company support letter confirming the details of the position to accompany the position. You will be provided detailed instructions regarding which pages to sign. The company signs all required forms, as an H-1B petition is an employer-sponsored petition. The beneficiary does not sign the H-1B petition. Once the forms are signed and returned to the law office, the H-1B petition will be finalized by the immigration attorney.

Throughout this process, your attorney will request all required supporting documentation needed to accompany the forms. This includes evidence of the work to be performed, the beneficiary's maintenance of immigration status, proof of a valid employer-employee relationship, the beneficiary's qualifications documents, the beneficiary's identification documentation, as well as proof the position is a specialty occupation.



Step 3: Determining the Filing Fee

Before the H-1B petition can be filed, your immigration attorney will determine the appropriate USCIS filing fee. The H-1B fees vary depending on petition type and company size.

For H-1B new (cap or cap-exempt) and transfer cases, you must pay the base fee of \$460, an anti-fraud fee of \$500, and the ACWIA fee of \$750 if you have 25 or fewer employees, \$1,500 if 26 or more. There is an additional \$4,000 public law fee for any employer with 50 or more employees if 50% or more of the employees are on H1B.

For the first H-1B extension case, including an amendment + extension case if it is the first extension requested, the anti-fraud and public law fees are not required. For an H-1B amendment case and second/subsequent extension cases, the anti-fraud, public law, and ACWIA fees are not required, only the base fee.

A breakdown of the fees for 2022 Filing is provided below:

H-1B New (Cap or Cap Exempt) & H-1B Transfer Cases	
25 or Less Employees	\$1,710 (\$500 + \$460 + \$750)
26 or More Employees	\$2,460 (\$500 + \$460 + \$1500)
50 or More Employees, with 50% On H-1B	\$6460 (\$500 + \$460 + \$1500 + \$4000)
H-1B Extension Cases or H-1B Amendments + Extension (if first extension)	
25 or Less Employees	\$1,210 (\$460 + \$750)
26 or More Employees	\$1,960 (\$460 + \$1500)
H-1B Amendment & H-1B Second/Subsequent Extensions	
All Cases (Regardless of Employee Number)	\$460

There is an additional fee of \$2,500 for premium processing, which can be included with any case if you want a decision within 15 days. If you file a case in premium processing, USCIS will either approve the case within that time frame or issue a Request for Evidence (RFE) if further documentation is needed. If an RFE is received, the 15-day clock starts again once the response is received by USCIS. A premium processing request is made using Form I-907, which is prepared by the attorney only, so nothing is needed from the company side.



Step 4: Filing the Petition to USCIS

Once the LCA is certified, the forms are prepared and signed, the supporting documentation has been collected and reviewed for any issues, and the appropriate fee has been determined, your H-1B petition will be filed with USCIS. H-1B petitions are filed to a designated USCIS office based on the company headquarters location.

Once received, USCIS will issue a receipt notice. A receipt notice usually takes 2-4 weeks to arrive. The receipt number will contain a unique receipt number, which can be used to track the case online using the USCIS case status tool.

If USCIS decides further documentation is required to adjudicate the case, USCIS will issue a Request for Evidence (RFE), which allows 84-87 days to respond, depending on whether it is mailed or faxed. If USCIS does not require further documentation, the case will be processed and approved. Once approved, an approval notice will be issued and typically received within 10-14 days.





**Have questions about the H-1B Visa
Contact us anytime at
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