BRAVLIN PC
4001 N. 9TH STREET, SUITE 222
ARLINGTON, VA 22203
E: info@bravlin.com
O: 703.243.1474
F: 703.243.1494

BRAVLIN
LAW FIRM

Michael W. Lin*
DC&MD
Thu A. Ha
VA
Eun Kim
DC&VA
Kendall Niles*
MD
Stanton Braverman*
OF COUNSEL | DC
*(authorized to practice federal law in any state)

REQUEST PACKET FOR H-1B
Prepared by Michael W. Lin, Esquire

H-1 visa is a non-immigrant visa used to permit a foreign national to enter the United States temporarily for employment in a position[1] which requires specialized knowledge normally attained in one's college study toward a bachelor's degree in a specific specialty. The position must *require* ***at least*** a bachelor's degree, or equivalent, in a field that is related to the position offered. If the foreign national does not have a bachelor's degree in a related field, the foreign national may establish his/her qualifications through the 3 to 1 formula (3 years of professional experience may be substituted for each year of college-level training).[2]

This packet provides guidance on the H-1B classification for temporary employment of foreign workers in the United States in specialty occupations or as fashion models. The Immigration and Nationality Act (INA) as amended created the H-1B visa classification for temporary employment of foreign workers in the United States in specialty occupations or as fashion models. Amendments also created the H-1B1[3] classification for workers of Chile and Singapore in specialty occupations and the E-3[4] classification for workers of Australia in specialty occupations. In this packet, the term H-1B will include H-1B1 and E-3 unless otherwise noted. The H-1B program is intended to help US employers to fill their temporary labor needs in highly specialized fields by granting H-1B visas to qualified foreign nationals to work in the United States for the US employers who petition them. Only employers who are interested in sponsoring foreign nationals to work under H-1B status may petition USCIS in behalf of the foreign nationals. USCIS must approve the employer's H-1B visa petition before the foreign national named in the H-1B visa petition may work for the employer. A foreign national cannot sponsor him/herself for an H-1B visa. Moreover, if a foreign national has any ownership interest in the petitioning employer, the petitioning employer must establish it will maintain an absolute right to control the foreign national's H-1B employment notwithstanding his/her ownership interest.

The law establishes certain standards to protect similarly employed U.S. workers from being adversely affected by the employment of the foreign nationals under H-1B visa status. The law also protects the H-1B workers from unfair labor practice by employers who employ them. The H-1B program responsibilities are administered and enforced among various federal agencies: the Department of Labor's Office of Foreign Labor Certification (OFLC) and Wage and Hour Division (WHD), the Department of Homeland Security's U.S. Citizenship and Immigration Service (USCIS) and the U.S. Department of State (DOS). The federal government has stepped up its immigration enforcement. Employers and foreign nationals involved in the H-1B program must understand their respective obligations to ***strictly comply*** with the law.

---

[1] H-1B sponsorship is possible for part-time positions.

[2] 8 CFR 214.2(h)(4)(iii)(D)

[3] *H-1B1 worker* is a temporary, nonimmigrant of Chile or Singapore in a specialty occupation given status to work for your company. Initial status may be granted for up to one year. Status may be renewed twice, but only in one-year increments. There is an annual cap of 1,400 nationals of Chile and 5,400 nationals of Singapore.

[4] *E-3 worker* is a temporary, nonimmigrant of Australia in a specialty occupation given status to work for your company. Initial status may be granted for up to two years and is renewable. There is an annual cap of 10,500.

FILING AN I-129 H-1B VISA PETITION WITH USCIS[5]

Before the foreign national whom your company is interested in hiring can work for you, your company must file an H-1B visa petition in behalf of the foreign national with USCIS and obtain its approval.[6] Once the H-1B visa petition is approved, your company must read the I-797 approval notice carefully to see if it provides the foreign national with the employment authorization to begin his/her employment. USCIS may approve H-1B visa petitions without granting employment authorization to the foreign nationals in cases where the foreign nationals are not in the United States or if in the United States, have been found to be out of status.

For the initial petition, your company may request employment authorization for a maximum period of three years.[7] Six months before the expiration of the approved petition, your company may file an extension petition. The law permits a foreign national to work under H-1B status for a maximum period of six years.[8] Note that H-1B employment is ***employer specific***, which means that the foreign national is not authorized to work for anyone else except for your company. H-1B employment is also ***job and location specific***. Certain changes in the employment situation can affect the approved H-1B petition and the LCA.[9] The law requires the employer to file a petition to amend the approved H-1B petition **BEFORE** a material change occurs in the foreign national's H-1B employment. Material changes may include, but are not limited to, the following: change in job location, significant changes or additions to the duties and responsibilities, reduction in the foreign national's salary and compensation, change of employment status from full-time to part-time, reduction in work hours, termination of the employment, or a labor dispute, etc. **Your company must file an amended petition with USCIS before any material change takes place. If your company fails to file an amended petition before a material change takes place, this would constitute a substantive violation of your company's obligations under H-1B sponsorship and render the H-1B employment illegal. The foreign national may be found to be out of status, and your company may be liable for fines and penalties.**

STEPS FOR FILING AN H-1B VISA PETITION

Steps to file an H-1B visa petition for a foreign national are as follows:

1. File an ETA9035E labor condition application (LCA) with the DOL in which your company must review the terms and conditions as explained in the LCA and ETA9035CP and attest under penalty of perjury that your company will comply with the obligations therein. The DOL will take approximately seven (7) business days to certify the LCA. Once the LCA is certified, your company can go to Step #2.

2. File an H-1B Visa Petition with USCIS for adjudication. USCIS will review information on the certified LCA and the H-1B visa petition to determine whether the job meets the requirements of a specialty occupation and whether the foreign worker has the necessary qualifications for the position offered. If USCIS approves the visa petition, USCIS will issue a written approval (Form I-797) to your company with the validity period of your approved H-1B visa petition.

---

[5] NOTICE: while the information provided from pages 1 to 25 is addressed to your employer, It, nonetheless, applies to you since you will be the foreign national being sponsored by your employer. Therefore, it is very important for you to understand the entire process, including the rules and regulations, so that you are fully aware of your obligations as an H-1B worker. You are referred to in this packet as "foreign national".

[6] If the foreign national is currently under H-1B status working for another company, s/he may be eligible to begin H-1B employment with your company once H-1B visa petition is properly filed with USCIS. Please consult an experienced immigration lawyer before employing the foreign national.

[7] Your company should only request the H-1B employment period for your company's actual needs. For instance, if your company only needs the foreign national to work for you for one year, you must not request for three years. Your company will be liable for transportation cost of sending the foreign national to his/her home country if you terminate the employment prior to the authorized period of stay as requested.

[8] Foreign national under H-1B status may be eligible for extension of H-1B status beyond the six year limitation if s/he qualifies for one of the following conditions before the expiration of the six year H-1B limit: 1. Labor certification application for permanent residency (ETA9089) has been filed on behalf of the foreign national and the application has been pending for at least 365 days; and/or 2. I-140 visa petition has been approved for the foreign national but the visa number is not yet available.

[9] *Labor condition application (LCA)*, Form ETA9035E is a legal document that your company must file with the DOL's ETA when it seeks to employ a foreign national under H-1B visa status.

3. Your company must read the I-797 approval notice carefully to see if it provides the foreign national with the employment authorization to begin his/her employment. USCIS may approve H-1B visa petitions without granting employment authorization to the foreign nationals in cases where the foreign nationals are not in the United States or if in the United States, have been found to be out of status. If the sponsored foreign national is abroad or will apply for an H-1B visa abroad, your company will need to send the original H-1B approval notice to the foreign national who will need to apply for an H-1B visa with US Consulate. Please note that once the H-1B visa petition is approved, the aforementioned federal agencies will begin enforcing the terms and conditions of the H-1B visa petition and the LCA attestations therein, which include the material facts[10] and labor condition statements. USCIS may send an agent to your company and/or the job site(s) to investigate and verify whether the foreign national is employed in the position as stated in the H-1B visa petition.

STEP 1: FILING THE ETA9035E LABOR CONDITION APPLICATION (LCA)

Filing the LCA requires your company to provide, among other things, to the DOL: material information about the proffered position, wage offer, prevailing wage rate information, job location, and period of employment requested. Your company must also review the terms and conditions of being an H-1B sponsor and certify under the penalty of perjury that the conditions listed below have been, and will continue to be, met for the duration of the H-1B employment.

(1) **Wages:** The employer shall pay nonimmigrant workers at least the prevailing wage or the employer's actual wage, whichever is higher, and pay for non-productive time. The employer shall offer nonimmigrant workers benefits and eligibility for benefits provided as compensation for services on the same basis as the employer offers to U.S. workers. The employer shall not make deductions to recoup a business expense(s) of the employer including attorney fees and other costs connected to the performance of H-1B, H-1B1, or E-3 program functions which are required to be performed by the employer. This includes expenses related to the preparation and filing of this LCA and related visa petition information. 20 CFR 655.731;

(2) **Working Conditions:** The employer shall provide working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed. The employer's obligation regarding working conditions shall extend for the duration of the validity period of the certified LCA or the period during which the worker(s) working pursuant to this LCA is employed by the employer, whichever is longer. 20 CFR 655.732;

(3) **Strike, Lockout, or Work Stoppage:** At the time of filing this LCA, the employer is not involved in a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the area(s) of intended employment. The employer will notify the Department of Labor within 3 days of the occurrence of a strike or lockout in the occupation, and in that event the LCA will not be used to support a petition filing with the U.S. Citizenship and Immigration Services (USCIS) until the DOL Employment and Training Administration (ETA) determines that the strike or lockout has ended. 20 CFR 655.733; and

(4) **Notice:** Notice of the LCA filing was provided no more than 30 days before the filing of this LCA or will be provided on the day this LCA is filed to the bargaining representative in the occupation and area of intended employment, or if there is no bargaining representative, to workers in the occupation at the place(s) of employment either by electronic or physical posting. This notice must be posted for a total period of 10 days, except that if employees are provided individual direct notice by e-mail, notification need only be given once. A copy of the notice documentation will be maintained in the employer's public access file. A copy of the LCA will be provided to each nonimmigrant worker employed pursuant to the LCA. The employer shall, no later than the date the worker(s) report to work at the place(s) of employment, provide a signed copy of the certified LCA to the worker(s) working pursuant to this LCA. 20 CFR 655.734

---

[10] *Material fact* means a significant item of information on the LCA, such as: the number of H-1B workers sought; the occupational classification for the worker sought; the rate of pay; the address where documents are kept; the three-digit occupational group code; the job title; the part-time status of the employee; the prevailing wage rate and its source; the period of employment; the location where the H-1B worker will work; and the additional labor condition statements.

Your company is required to post a notice at the place(s) of employment. If the foreign national will be assigned to work at a third-party site, the notice of LCA filing must be posted at the third party site as well. If the third-party company refuses to allow the above-described posting at its site, your company will not be able to file the LCA, which means your company cannot sponsor the foreign national for H-1B.

Before preparing the LCA to be filed, your company will need to create and maintain a public access file (PAF) to document the compliance of the above terms and conditions as we will explain below.

PUBLIC ACCESS FILE: SUPPORTING DOCUMENTATION NEEDED FOR LCA FILING

Evidence of your attestations to the labor conditions must be kept in a public access file (PAF) and made available for public inspection at the worksite or at your company's principal place of business in the U.S. *on or within 30 days before your company files the LCA*. The PAF must be kept for a minimum of one year after the end date of the authorized period of stay or the date of employment termination, whichever occurs earlier. The PAF must contain the following documentation:

- A signed certified LCA and ETA9035CP;
- Memorandum in support of the above conditions;
- Prevailing Wage Determination and Similarly employed employee worksheet;
- Summary of employee benefits;
- Completed internal posting notices;
- Signed Acknowledgement of LCA Receipt by the foreign national.

Although compliance with the LCA is primarily complaint-driven, the DOL may also investigate on its own accord. If the DOL determines that there was a violation, the employer may be required to pay a civil penalty, and the employer may be barred from petitioning or extending petitions for foreign employees for at least one year. Additionally, whether or not the above penalties are imposed, the employer may be required to pay back wages to all foreign nationals in a particular classification. No determination may be made without a full hearing procedure.

STEP 2: FILING AN I-129 H-1B VISA PETITION WITH USCIS

After the LCA is certified, your company will need to file an I-129 H-1B visa petition with USCIS for its adjudication. The H-1B visa petition generally consists of the following: 1. Immigration forms; 2. Cover letter from your company and supporting evidence to address issues as outlined below; and 3. Evidence of the foreign national's qualifications; and 4. Evidence of the foreign national's legal status, if applicable.

H-1B SPECIALTY OCCUPATION

For H-1B sponsorship, the proffered position offered to the foreign national must qualify as a "specialty occupation" under the immigration regulations, which is defined as follows:

... an occupation which requires theoretical and practical application of a body of highly specialized knowledge in such fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in ***a specific specialty****, or its equivalent, as a minimum for entry into the occupation in the United States.*

USCIS does not use a title, by itself, when determining whether a particular position qualifies as a specialty occupation. The specific duties of the proffered position, combined with the nature of your business operations are some of the factors that USCIS considers. USCIS must examine the employment of the foreign national and determine whether the position qualifies as a specialty occupation. The critical element is whether the position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in ***a specific specialty*** as the minimum for entry into the occupation.

ISSUE #1: Job Duties and Responsibilities

Your job description must be sufficiently detailed to establish the depth, complexity, level of specialization, or substantive aspects of the duties for which the foreign national will be responsible. For example, if your

job calls for “analysis of” or “providing troubleshooting and technical assistance,” you will need to provide specific details regarding the foreign national’s role in these duties. You will need to elaborate on the **specific tasks, methodologies, and applications of knowledge** required in furtherance of these duties. Terms such as "troubleshooting" "modify" and "testing" would provide little insight into the foreign national’s specific role within these tasks and therefore are simply insufficient. The key is to elaborate how and what methodologies, skills, etc. that the foreign national applies to carry out the duties.

Therefore, your job description should include: (1) the actual work that the foreign national will perform; (2) the complexity, uniqueness and/ or specialization of the duties; and (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

You should also break down the job description by percentage of time and at the end of each segment, provide a list of the courses taken by the foreign national and explain how the knowledge acquired in each course is applied in the actual performance of the job duties. Attachment 1 is a template for Sample Job Description of what may be sufficient for USCIS. **Please provide us with a detailed job description for the foreign national based on the template.**

ISSUE #2: Job Requirements: Bachelor’s or Higher Degree in a Specific Specialty

After reviewing the job description, USCIS will evaluate your company’s job requirements for the position to see if it qualifies as a specialty occupation. USCIS has interpreted the regulations very narrowly to mean that if an employer accepts *various fields of study* for the position, then it must not be a specialty occupation if these fields of study are not closely related. There are federal court case decisions, such as *Raj & Co. v. United States Citizenship and Immigration and Services* and *Residential Finance Corp v. USCIS*, that have overturned the USCIS’s narrow interpretation as being arbitrary, capricious, and an abuse of discretion. Nonetheless, USCIS is reasserting a legal position that it is not bound to follow the published decision of a United States district court arising even within the same district, citing the Board of Immigration Appeals decision in *Matter of K-S-*, 20 I&N Dec. 715 (1993).

USCIS would only accept various fields of study only if ***the specialties are closely related***, e.g., Chemistry and Biochemistry. On the other hand, if a job requires a degree in two disparate fields, such as Philosophy and Engineering, USCIS most likely will deny the H-1B visa petition since Philosophy and Engineering are two separate distinct fields of study that are not closely related.

We came across a case decision by USCIS in denying an H-1B for a “Training and Development Specialist” occupation. USCIS cites the DOL’s Occupational Outlook Handbook (OOH) regarding this occupation in which the DOL states that this occupation may be performed by specialists with a variety of educational backgrounds such as a bachelor’s degree in “Training and Development, Human Resources, Education or Instructional Design.” The DOL further states that others have a degree in business administration or social science such as Organizational Psychology. USCIS contends that since the OOH does not indicate that a baccalaureate degree in **a specific field of study** is the minimum educational requirements for the occupation, this occupation could not qualify for H-1B. The above is an example of the narrow interpretation of USCIS when it comes to the issue of “specialty occupation.” USCIS has continued to rely on the OOH as the basis for its narrow interpretation of the law.

Overall, if you accept a range of specialties for the position offered, you will be required to establish that these fields of study are closely related and each specialty correlates to the H-1B position itself.

ISSUE #3: Company Standard

USCIS will review subjective evidence to determine if a bachelor’s degree in a specific specialty represents the minimum educational requirement for the H-1B position in your company. **Therefore, please provide the following to us, if applicable:**

- Copies of your present and past job postings or announcements for the proffered position showing that you require applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent.
- Documentary evidence of your past employment practices for the position, including copies of:
    - employment or pay records; and
    - degrees or transcripts to verify the level of education of each individual and the field of study for which the degree was earned.

ISSUE #4: Industry Standard

Aside from the subjective evidence above, USCIS will request objective evidence to ascertain if a bachelor's degree in a specific specialty represents the minimum educational requirement for the H-1B occupation in the industry. USCIS will review the DOL's OOH to determine whether said occupation qualifies as a specialty occupation in the industry. USCIS has been using the vagueness in the DOL's OOH description in denying H-1B visa petitions. Particularly for cases that do not traditionally fall within Job Zone 4 or higher (e.g., Legal Assistants and Paralegals, Computer Support Specialists), USCIS could argue that your H-1B position does not qualify as a specialty occupation. You can address this issue by submitting the following:

- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations. Printing the ads out from indeed.com or other career sites may not be sufficient. Copies of the ads should be from a similar organization in the same industry as your company.
- Letters from an industry-related professional association indicating that they have made a bachelor's degree or higher in a specific specialty a requirement for entry into the field. Copies of letters or affidavits from firms or individuals in the industry that attest that similar organizations routinely employ and recruit only degreed individuals in a specific specialty. Any letter or affidavit should be supported by the following:
    - the writer's qualifications as an expert;
    - how the conclusions were reached; and
    - the basis for the conclusions supported by copies or citations of any material used.
- Any article or trade publication that explains the educational requirements for the job in the industry.

ISSUE #5: Determining the Appropriate Wage Level for the Job

The main issue for the H-1B petitions is the LCA Wage Level. USCIS has argued that H-1B petitions with the designation of Level I wage rate may not qualify for an H-1B. USCIS focuses on the definition of Level I as stated in the DOL's 2009 Prevailing Wage Guidance in serving as the foundation for its H-1B denials. For the detailed description of each wage level, please review the following definitions carefully.

> 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. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.
>
> Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.
>
> 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. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered. Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. Words such as 'lead' (lead analyst), 'senior' (senior programmer), 'head' (head nurse), 'chief' (crew chief), or 'journeyman' (journeyman plumber) would be indicators that a Level III wage should be considered.
>
> 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. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. 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. They generally have management and/or supervisory responsibilities.

While the DOL defines each wage level, the 2009 Prevailing Wage Guidance actually requires the employer to go through a mathematical calculation in determining the appropriate wage level for the job. Nonetheless, USCIS is using the DOL's definition as a way to question the specialty of the occupation. USCIS contends that how would a position qualifies as a specialty occupation showing sufficient complexity (as explained in Step 1 above) and still meets the definition of entry-level under Wage Level I.

If your company selects Wage Level I, then your company must explain why such a specialty occupation can still be an entry-level position, which requires "only a basic understanding of the occupation ... performs routine tasks that require limited, if any, exercise of judgment". **Your company will need to provide the following:**

- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
    - list all divisions in the organization;
    - identify the proffered position in the chart;
    - show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
    - indicate who will direct the beneficiary, by name and job title.
- Explain what "basic understanding" of the job means
- Explain how you intend to "closely supervise and monitor" the foreign national's work
- Explain whether the job only involves "exercising limited judgment, if any."

ISSUE #6: Foreign National's Qualifications

USCIS will review the foreign national's educational qualifications to determine if s/he has the necessary qualifications for the job. For instance, we have seen USCIS raised issues regarding the applicability of a bachelor's degree in Electrical Engineering, Mechanical Engineering, or other science related field for the occupation of Software Engineer. Likewise, we have seen challenges from USCIS in cases where the foreign national has a master's degree in Business Administration for the position of Market Research Analyst. The immigration regulations will allow an employer to consider the foreign national's additional professional experience in addition to the education based on the formula of 3 to 1, which means 3 years of professional experience may be substituted for each year of college-level training. For instance, if you have a candidate who has a bachelor's degree in Electrical Engineering but has many years of work experience in computer related field, it is possible to ask for a foreign equivalency evaluation based on the combination of the education and professional experience to determine if s/he has the equivalent of a bachelor's degree in Computer Science, Information Systems or a related field. Please pay particular attention to this as part of the H-1B preparation.

ISSUE #7: Employer-Employee Relationship. Right to Control (for IT related positions only)

Your company is required to establish by a preponderance of the evidence that a valid employer-employee relationship will exist between your company and the beneficiary (right to congtrol). Evidence of your company's right to control the foreign national's work may include, but is not limited to the following: the ability to hire, fire, pay, and supervise the beneficiary, the sole discretion to control the foreign national's request for vacation time, or how the foreign national performs the tasks, etc. Whether the foreign national will work at your company location or end client site, you must provide/answer the following:

- Specific project assignments;
- Skills required to perform the specialty occupation;
- The source of the instrumentalities and tools required to perform the specialty occupation;
- What is the location of the work;
- The duration of the relationship between you and the foreign national;
- Do you have the right to assign additional work to the foreign national?

- The extent of the foreign national's discretion over when and how long to work;
- How do you pay the foreign national (e.g. weekly, biweekly, monthly)?;
- Does the foreign national have the ability to hire and pay assistants?
- Is the specialty occupation work part of your regular business;
- Are you in business?
- Do you offer any employee benefits to the foreign national?
- The tax treatment of the foreign national (e.g. W2 or 1099)?
- Can you hire or fire the foreign national or set rules and regulations on his/her work;
- To what extent do you supervise the foreign national's work; and/or
- Does the foreign national report to someone higher in your organization?

USCIS will require the following evidence in support of the H-1B petition:

- Copy of relevant portions of valid contracts, statements of work, work orders, service agreements, and letters between you and the authorized officials of the ultimate end-client
- Copy of a specific position description or any other documentation from the end client that describes the skills required to perform the job offered, the tools needed to perform the job, the product to be developed or the service to be provided;
- Sampling of the beneficiary's proposed duties along with project timelines, schedules, deliverables and whether the product will be produced for the marketplace;
- A comprehensive organizational chart, to include all employees, duties, current assignments and related educational requirements; and/or
- Signed copies of your two or three most recently filed Quarterly tax returns to include all required schedules and statements.
- If the beneficiary will be developing a product for the end client, please submit documentation to show the progress on the designated project(s). USCIS requests that you include updated timelines for anticipated or completed project deliverables. Please also indicate the current phase of the end client project. Additionally, USCIS requests that you provide a list of employees your end client has assigned or will assign to the project. Please note that USCIS may contact any clients whom your company, and your end client, claims to have previously had or currently have valid agreements in order to confirm the claimed relationship and verify your ability to offer specialty occupation work as a practicing business entity in the software and information technology industry. Please ensure that if you submit documentation concerning clients with whom you have provided or will provide software development services, the record should contain current contact information, including the name, title, phone number for place of employment, and email address of one or more representatives at each client's location who can corroborate documentation submitted. USCIS reserves the right to confirm all additional corroborative evidence submitted in your response.

Please note that USCIS may come up with additional issues to challenge our understanding of the immigration law. We will do our best to update this packet as more issues develop.

EXPORT CONTROL

In the I-129 H-1B Visa Petition, your company is required to certify the following:

- Your company has reviewed U.S. export control regulations;
- A license is not required to release technology to the foreign national; or
- If an export license is required, it will not release controlled technology to the foreign national until it has received a license or other U.S. Government authorization to do so.

The export control regulations are highly complicated. To fully protect your company from violating export control regulations, your company must review the export control regulations and seek independent legal assistance to determine if a license is required to release technology or technical data to the foreign national. Our legal services in this H-1B filing DO NOT include legal work in analyzing your company's export control compliance in this H-1B filing.

STEP 3: AFTER THE H-1B VISA PETITION HAS BEEN APPROVED

1. Once the H-1B visa petition has been approved for the foreign national (hereinafter as "H-1B Worker"), your company must read the approval notice carefully to see if the approval provides your company with the authorization to begin employing H-1B Worker. If such authorization is granted, your company must ask H-1B Worker to complete Form I-9, before the employment begins. Your company may keep a copy of the H-1B approval notice (Form I-797), along with whatever additional document(s) as required by Form I-9, subject to your company's record retention policy for the purpose of I-9. When your company completes Form I-9, make sure you list the expiration of the I-94, instead of the expiration of the visa, as the validity of the employment authorization.

2. If the H-1B approval notice requires H-1B Worker to first apply for an H-1B visa abroad and be admitted with said H-1B visa before the employment can be authorized, your company cannot employ H-1B Worker until s/he obtains an H-1B visa and is admitted to the U.S. per that visa. Once H-1B Worker has arrived in the U.S., your company must begin H-1B Worker's employment within 30 days from the date of his/her arrival. Make sure to ask H-1B Worker to complete Form I-9, before employing him/her. Your company must examine and verify H-1B Worker's I-94 and visa stamp page (your company must review instructions for I-9 to see if there is anything else is needed).

3. If H-1B Worker obtains his/her H-1B status through change of status in the U.S., or the existing H-1B visa has or is expired or is no longer valid, AND H-1B Worker wishes to travel abroad, s/he must obtain a new H-1B visa from US consulate before returning to the U.S. Your company must provide the following documents to the H-1B Worker to ensure his/her successful application for an H-1B visa.

    a. The original H-1B approval notice (Form I-797);
    b. A complete copy of the visa petition;
    c. A letter confirming H-1B Worker's employment status with your company; and
    d. Most recent pay statements, if readily available.

    NOTE: The US Consulate may verify the validity of the approved visa petition directly with the Kentucky Consular Center (KCC) of the Department of Homeland Security before H-1B Worker appears for an interview. The US Consulate may also conduct a background check to verify the bona fide of the sponsorship, H-1B Worker's claimed education and/or work experience, if applicable, as well as his/her personal history, etc. Such background check may take time and therefore potentially delays visa issuance.

4. **IMPORTANT!!** Whenever H-1B Worker travels abroad, s/he will need to go through inspection at the time of returning to the U.S. The Department of Homeland Security (DHS) will issue a new I-94 to H-1B Worker to reflect his/her legal status as well as the duration of stay. Under certain circumstances, DHS has known to issue I-94 with a shorter period of validity than the validity of the H-1B visa or approved visa petition (e.g., passport expiring before the expiration of the approved visa petition). It is highly recommended that H-1B Worker visits https://i94.cbp.dhs.gov/ to print out his/her I-94 so H-1B Worker can verify that the CBP did correctly issue an I-94 with proper H-1B classification and the duration of stay as granted by the H-1B approval notice. If there is a mistake or discrepancy, H-1B Worker must contact the CBP to correct the I-94. In a situation where the DHS refuses to correct the validity date or H-1B Worker fails to catch the discrepancy, then the validity of that I-94 controls, which means that H-1B Worker can only remain and work in the U.S. until the expiration date as authorized on the I-94.

5. Before H-1B Worker travels to and/or leaves the US, s/he should always visit the following US government websites for the latest information on travel restrictions and/or requirements: www.dhs.gov, www.cpb.gov or www.state.gov/travel/

6. Please keep track of the expiration date of the nonimmigrant/H-1B status, which is shown on the I-94. Your company's authorization to employ H-1B Worker is only valid as long as H-1B Worker's most recent I-94 remains unexpired. H-1B Worker's legal right to work for your company is based on the validity of the most recent I-94, not the visa itself. Your company should develop a policy to ask H-1B Worker to provide the most recent I-94 if and whenever s/he returns to the U.S. after traveling abroad against the information on the I-9 file to make sure the expiration date has not changed. PLEASE KEEP IN MIND THAT IT IS YOUR COMPANY'S SOLE RESPONSIBILITY TO TRACK THIS DATE.

7. **H-1B employment is employer specific, job specific and location specific, etc.** H-1B Worker is only authorized to work under the job title and at the work site(s) mentioned in the H-1B visa petition. Your company is advised NOT to make any changes to the terms and conditions of employment (except a normal increase in salary) without consulting legal counsel. A change of job title, responsibilities, job site, or corporate change may require the filing of an amended petition with USCIS before the material changes can take place.

8. H-1B Worker must be aware of his/her own legal status at all time. The legal right to remain in the U.S. is governed by the validity of I-94. H-1B Worker can only work for your company under the terms and conditions of the approved petition. H-1B Worker must bring to your company's attention if his/her I-94 will expire within seven months so to give Your company sufficient time to prepare for filing an extension petition before I-94 is expired (failure to file extension petition before I-94 expires will render H-1B Worker out of status). H-1B Worker and your company are hereby advised that, once the extension petition has been filed before the expiration of I-94, H-1B Worker may continue working for **an additional 240 days** (provided that the extension petition was timely filed before the expiration of I-94). Such authorization shall be subject to any conditions and limitations noted on the initial authorization. However, if USCIS adjudicates the visa petition before the expiration of this 240 day period and denies the visa petition for extension of stay, the employment authorization under this provision of the law shall automatically terminate upon notification of the denial decision. Moreover, if H-1B extension is not granted by the end of this 240 day period, H-1B Worker must stop working unless the appropriate steps have been taken to obtain additional employment authorization.

9. It is also important to note that if H-1B Worker is laid off, resigns or his/her employment with your company has been terminated, H-1B Worker has a "one-time grace period" of 60 days, or through the expiration of H-1B Worker's I-94, **whichever is shorter**, to look for another job or change status.

10. If H-1B Worker's I-94 has expired and no extension petition or change of status application has been filed, H-1B Worker would begin to accrue unlawful presence. If H-1B Worker accrues 180 days of unlawful presence and then departs from the U.S. after that, H-1B Worker will become inadmissible for 3 years. If H-1B Worker accrues 1 year of unlawful presence and then departs from the U.S., there will be a 10 year bar.

11. Your company must file an extension petition with USCIS to extend H-1B Worker's H-1B visa status no earlier than 6 months before the expiration of H-1B Worker's most recent I-94**. Your company is hereby advised that an H-1B Worker is eligible to extend H-1B status for an aggregate period of stay of up to six years.** At the end of six-year period, H-1B Worker will no longer be eligible to extend his/her H-1B status, unless one of the following conditions exists:

    a. H-1B Worker has an employment-based permanent residency process (e.g. labor certification application or I-140 visa petition filed) filed and pending for at least 365 days prior to reaching six-year limit. Under this scenario, H-1B Worker is eligible to extend his/her H-1B for one year, per each extension request; or
    b. H-1B Worker has an I-140 visa petition approved but because of the lack of visa number, H-1B Worker is unable to file his/her I-485 application to adjust status or consular processing. In this case, H-1B Worker is eligible to extend his/her H-1B for three years.

    If either of the above scenarios does not apply, the foreign national must leave the U.S. may only be eligible to reapply for H-1B visa only if s/he has stayed abroad for at least 12 months, or for whichever period necessary until his/her green card process has been pending for 365 days, which occurs first. (** certain restrictions apply)

12. Your company guarantees that it has sufficient financial resources to pay H-1B Worker for the duration of employment under the terms of this petition.

13. Your company agrees to pay reasonable transportation cost for sending H-1B Worker to his/her home country in the event that your company terminates the employment before the authorized period of stay as approved by USCIS.

14. Your company agrees to pay H-1B Worker at the rate as required by the approved petition, even if H-1B Worker is being placed in a nonproductive status (i.e., benching). Failure to pay H-1B Worker at the rate that is required by the approved petition will constitute a direct violation of immigration law. Your company may face civil and/or criminal penalties, and complaint/lawsuit from H-1B Worker.

H-1B Worker may be considered out of status if s/he does not receive the rate of pay as guaranteed by your company. Additionally, your company could be held liable for salary and other benefits even after the termination of H-1B employment if the H-1B petition is valid and your company fails to revoke or otherwise withdraw the H-1B petition with USCIS. Below are examples of when the wages must be paid.

a. *Circumstances where wages must be paid.* If the H-1B Worker is not performing work and is in a nonproductive status due to a decision by Employer (*e.g.,* because of lack of assigned work), lack of a permit or license, or any other reason, Employer is required to pay the salaried employee the full pro-rata amount due, or to pay the hourly-wage employee for a full-time week (40 hours or such other number of hours as the employer can demonstrate to be full-time employment for hourly employees or the full amount of the weekly salary for salaried employees) at the required wage for the occupation listed on the LCA. If your company's LCA carries a designation of "part-time employment," your company is required to pay the nonproductive employee for at least the number of hours indicated on the I-129 petition filed by your company with the DHS and incorporated by reference on the LCA. If the I-129 indicates a range of hours for part-time employment, your company is required to pay the nonproductive employee for at least the average number of hours normally worked by H-1B Worker, provided that such average is within the range indicated; in no event shall the employee be paid for fewer than the minimum number of hours indicated for the range of part- time employment. In all cases H-1B Worker must be paid the required wage for all hours performing work within the meaning of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*

b. *Circumstances where wages need not be paid.* If H-1B Worker experiences a period of nonproductive status due to conditions unrelated to employment which take the nonimmigrant away from his/her duties at his/her voluntary request and convenience (*e.g.,* touring the U.S., caring for ill relative) or render the nonimmigrant unable to work (*e.g.,* maternity leave, automobile accident which temporarily incapacitates the nonimmigrant), then the employer shall not be obligated to pay the required wage rate during that period, *provided that* such period is not subject to payment under the employer's benefit plan or other statutes such as the Family and Medical Leave Act (29 U.S.C. 2601 *et seq.*) or the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*). Payment need not be made if there has been a *bona fide* termination of the employment relationship. INS regulations require the employer to notify the INS that the employment relationship has been terminated so that the petition is canceled (8 CFR 214.2(h)(11)), and require the employer to provide the employee with payment for transportation home under certain circumstances (8 CFR 214.2(h)(4)(iii)(E)).

15. Your company attests that it will abide by the conditions of the certified LCA for the entire duration of the H-1B Worker's employment.

16. Your company must immediately notify USCIS if H-1B Worker is no longer employed by your company. It is simply not enough to terminate H-1B Worker internally without notifying USCIS. **Notwithstanding the termination of H-1B's employment, your company is required to continue paying H-1B Worker the proffered wage rate until at such time when notifies USCIS of the termination. Moreover, if the employment is terminated before the authorized period of stay, your company must offer H-1B Worker the reasonable cost of transportation to send H-1B Worker to his/her home country.**

17. Your company understands that it must file an amended petition with USCIS and/or US Department of Labor, if there is a material change to H-1B Worker's employment while under H-1B status. Material changes include, but are not limited to: reduction in the hours worked, significant changes in job duties, reduction in wages (excluding regularly scheduled merit increases), any change in location of the position to an unspecific jobsite (i.e. jobsites that have not been identified in the original petition and certified ETA9035), or transfer of H-1B Worker to and/or from another entity (with a different FEIN number), even if the entity is affiliated or related to your company. Your company must consult with an immigration attorney immediately before any material change in the H-1B Worker's employment arises. Your company must file an amended petition with USCIS to update the material changes before they can take place. **Employment of H-1B Worker, without filing an amended petition, after a material change has occurred will trigger a substantive violation of the terms and conditions of the approved petition, hence constituting illegal employment.**

18. Your company must maintain public access file (PAF) in connection with its H-1B filing for a minimum of one year after the end date of the authorized period of stay or the date of employment termination, whichever occurs earlier. The PAF must contain the following information:

    - A copy of the certified ETA9035 and ETA9035CP;
    - Wage memorandum to show:
        a. Wage rate to be paid to the H-1B worker
        b. Wage rate to be paid to the H-1B worker
        c. Full and clear explanation of your actual wage system, if applicable;
        d. Prevailing wage rate and its source.
        e. Acknowledgement that in the event you have a corporate change, you must provide a sworn statement by a responsible official of your new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCA and its date of certification, and a description of the actual wage system and Employer Identification Number (EIN) of your new employing entity, prior to moving H-1B worker(s) from your old company (predecessor) to a new employing entity (successor).
        f. List of entities included as a "single employer" under the Internal Revenue Code.
    - Prevailing Wage Determination and Similarly employed employee worksheet;
    - Summary of employee benefits;
    - Completed internal posting notices;
    - A signed statement by foreign national acknowledging receipt of certified LCA.

19. If corporate merger or acquisition occurs, successor entity may not be required to file an amended petition and/or new ETA9035 (LCA) if the following conditions exist: (**Must consult with an immigration attorney before making any decision with respect to H-1B Worker's employment if your company will undergo merger and/or acquisition**).

    a. The successor entity, **before** the continued employment of H-1B Worker, agrees to assume the predecessor entity's obligations and liabilities under the LCA filed by the predecessor. The successor entity must include a sworn statement by a responsible official attesting that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCAs and the dates of certification, and a description of the actual wage system and FIN of the new employing entity; AND
    b. There is no material change to the underlying terms and conditions of the H-1B Worker's employment (job location, title, salary, duties and responsibilities, etc. remain the same).

20. "Authorized deduction" -- Employer may only make a deduction from H-1B Worker's wages according to one of the following three sets of criteria.
    a. Deduction which is required by law (e.g., income tax; FICA); or
    b. (ii) Deduction which is authorized by a collective bargaining agreement, or is reasonable and customary in the occupation and/or area of employment (e.g., union dues; contribution to premium for health insurance policy covering all employees; savings or retirement fund contribution for plan(s) in compliance with the Employee Retirement Income Security Act, 29 U.S.C. 1001, et seq.), except that the deduction may not recoup a business expense(s) of the employer (including attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by your company, e.g., preparation and filing of LCA and H-1B petition); the deduction must have been revealed to the worker prior to the commencement of employment and, if the deduction was a condition of employment, had been clearly identified as such; and the deduction must be made against wages of U.S. workers as well as H-1B Workers (where there are U.S. workers); or
    c. Deduction which meets the following requirements:
        1. Is made in accordance with a voluntary, written authorization by the employee (Note to paragraph (c)(9)(iii)(A): an employee's mere acceptance of a job which carries a deduction as a condition of employment does not constitute voluntary authorization, even if such condition were stated in writing);
        2. Is for a matter principally for the benefit of the employee (Note to paragraph (c)(9)(iii)(B): housing and food allowances would be considered to meet this "benefit of employee" standard, unless the employee is in travel status, or unless the circumstances indicate that the arrangements for the employee's housing or food are principally for the convenience or benefit of your company (e.g., employee living at worksite in "on call" status));

3. Is not a recoupment of the employer's business expense (e.g., tools and equipment; transportation costs where such transportation is an incident of, and necessary to, the employment; living expenses when the employee is traveling on the employer's business; attorney fees and other costs connected to the performance of H-1B program functions which are required to be performed by the employer (e.g., preparation and filing of LCA and H-1B petition)). (For purposes of this section, initial transportation from, and end-of-employment travel, to the worker's home country shall not be considered a business expense.);
4. Is an amount that does not exceed the fair market value or the actual cost (whichever is lower) of the matter covered (The employer must document the cost and value); and
5. Is an amount that does not exceed the limits set for garnishment of wages in the Consumer Credit Protection Act, 15 U.S.C. 1673, and the regulations of the Secretary pursuant to that Act, 29 CFR part 870, under which garnishment(s) may not exceed 25 percent of an employee's disposable earnings for a workweek.

21. A deduction from or reduction in the payment of the required wage is not authorized (and is therefore prohibited) for the following purposes:
    a. A penalty paid by the H-1B Worker for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer.
    b. The employer is not permitted to require (directly or indirectly) that the nonimmigrant pay a penalty for ceasing employment with the employer prior to an agreed date. Therefore, the employer shall not make any deduction from or reduction in the payment of the required wage to collect such a penalty.
    c. The employer is permitted to receive bona fide liquidated damages from the H-1B Worker who ceases employment with the employer prior to an agreed date. However, the requirements of Clause 16(c) above must be fully satisfied, if such damages are to be received by the employer via deduction from or reduction in the payment of the required wage.
    d. The distinction between liquidated damages (which are permissible) and a penalty (which is prohibited) is to be made on the basis of the applicable State law. Please be advised that the corporate user fee can never be included in any liquidated damages received by the employer.
    e. A rebate of the corporate user fee paid by the employer, if any, under Section 214(c) of the INA. The employer may not receive, and the H-1B Worker may not pay, any part of the corporate user fee, whether directly or indirectly, voluntarily or involuntarily. Thus, no deduction from or reduction in wages for purposes of a rebate of any part of this fee is permitted. Further, if liquidated damages are received by the employer from the H-1B Worker upon the nonimmigrant's ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer, such liquidated damages shall not include any part of the corporate user fee. If the filing fee is paid by a third party and the H-1B Worker reimburses all or part of the fee to such third party, the employer shall be considered to be in violation of this prohibition since the employer would in such circumstances have been spared the expense of the fee which the H-1B Worker paid.
    f. Any unauthorized deduction taken from wages is considered by the Department to be nonpayment of that amount of wages, and in the event of an investigation, will result in back wage assessment (plus civil money penalties and/or disqualification from H-1B and other immigration programs, if willful).
    g. Where the employer depresses the employee's wages below the required wage by imposing on the employee any of the employer's business expenses(s), the Department will consider the amount to be an unauthorized deduction from wages even if the matter is not shown in the employer's payroll records as a deduction.
    h. Where the employer makes deduction(s) for repayment of loan(s) or wage advance(s) made to the employee, the Department, in the event of an investigation, will require the employer to establish the legitimacy and purpose(s) of the loan(s) or wage advance(s), with reference to the standards set out in paragraph Clause 16(c) above.

22. **Notify USCIS of all address changes.** Any person other than a U.S. citizen is required to file form AR-11 within ten (10) days of any move to notify USCIS of their new address and other contact information. This is also required for a temporary move. The AR-11 form can now be completed on USCIS website at www.uscis.gov.

23. Your company acknowledges and affirms that BRAVLIN PC's legal services in this H-1B filing do not include legal work in analyzing your company's export control compliance. Your company understands that releasing or providing access to the foreign national of controlled technology or technical data covered under the export control regulations, without first obtaining the required export license, is a violation of federal law, which may carry severe civil and criminal penalties. Your company is hereby advised by the firm to seek independent legal assistance on the issue of export control compliance in the H-1B petition filing. Your company will hold the firm harmless, come to the firm's defense, and release the firm from liability should your company is found in violation of the export control regulations in this H-1B filing.

IMPORTANT NOTICE REGARDING FDNS SITE VISIT

Please be advised that USCIS is stepping up efforts to verify the legitimacy of the H-1B sponsorship by sending inspectors to make unannounced on-site inspections at the H-1B employer's business and/or the H-1B employee's worksite. It is very important to follow the instructions below if you are visited by, or receive a phone call from, an inspector.

The inspection may last up to one hour. **Please make sure to take notes during their inspection and interviews and obtain all contact, information of the officer. Please be respectful, straightforward and truthful. Keep it simple. Make sure to have a witness present when any individual is speaking with an official**. During the visit, the immigration official will perform an inspection of the following:

1. The office premises will be inspected in order to determine the legitimacy of the facility originally represented in the I-129 petition. Photographs may be taken of the premises.
2. Representatives of the company who signed form I-129 will be interviewed to determine legitimacy of the form originally signed and may be asked detailed questions concerning the business, office locations and number of employees (number of immigrant and non-immigrant workers), and number of work stations, if applicable, as well as detailed information concerning the H-1B beneficiary's title, job duties, job requirements, work location, and salary. (Please note that H-1B specialty occupation class requires at minimum a bachelor's degree or its equivalent. However, if the beneficiary does not have this degree, USCIS accepts three years of progressive work experiences to substitute for one year of college education.) **You may request to call your attorney if necessary.**
3. The H-1B beneficiary may be interviewed to answer questions about his/her salary (equal or more than LCA), job title, job duties, and requirements, employment dates, position location, background information, current address, dependents' information, etc. **Please make sure that the beneficiary is fully aware of the contents of his/her H-1B petition and of job duties and requirements.**
4. Other employees of the company may be interviewed to confirm the same information regarding the H-1B beneficiary's personal and work information. Please make sure that employees and colleagues are aware of the beneficiary's title and duties.
5. In the next page you will find detailed information about the Office of Fraud Detection and National Security (FDNS) and its mission.

DETAILED INFORMATION ABOUT FDNS

Administrative Site Visit and Verification Program
The Fraud Detection and National Security (FDNS) Directorate created and implemented the Administrative Site Visit and Verification Program (ASVVP) in July 2009 as part of its ongoing enhancement to the integrity of the immigration benefit process.

What is the ASVVP?
Under the ASVVP, FDNS conducts unannounced pre- and post-adjudication site inspections to verify information contained in certain visa petitions. USCIS provides petitioners and their representatives of record (if any) an opportunity to review and address the information before denying or revoking an approved petition based on information obtained during a site inspection.

How Are Site Inspections Chosen?
FDNS may perform ASVVP site inspections on randomly-selected applications and petitions, both pre- and post adjudication. ASVVP site inspections are performed without notice. ASVVP site inspectors do not make decisions on immigration benefit petitions or applications.

What are the Site Inspector's Tasks?
ASVVP site inspectors:

- Verify the information submitted with the petition, including supporting documentation submitted by the petitioner, based on a checklist prepared by USCIS
- Verify the existence of a petitioning entity
- Take digital photographs
- Review documents

- Speak with organizational representatives to confirm the beneficiary's work location, employment workspace, hours, salary and duties

Site inspectors will report the results of their site inspections to FDNS, which will review the information to determine whether the petitioner and the beneficiary have met or continue to meet eligibility requirements.

What Happens After an ASVVP Inspection?
An FDNS Officer will review the information gathered, and determine whether there is a need to conduct an administrative inquiry. If so, and following that inquiry, FDNS will provide an Immigration Services Officer (ISO) with a Summary of Findings (SOF). The ISO will use the SOF to determine whether or not the petitioning organization qualifies for the benefit sought. If FDNS cannot verify the information on the petition or finds the information to be inconsistent with the facts recorded during the site visit, the ISO may request additional evidence from the petitioner or initiate denial or revocation proceedings. When indicators of fraud are identified, the FDNS Officer may conduct additional administrative inquiries or refer the case to ICE for criminal investigation.

Other Anti-Fraud Efforts
The ASVVP complements other USCIS anti-fraud efforts. In addition to ASVVP visits, FDNS also conducts site visits to support occasional Benefit Fraud and Compliance Assessments and on cases in which immigration fraud is suspected.

H-1B RULES AND REGULATIONS

The enforcement of the H-1B program is done jointly by the DHS and DOL. Both agencies may send agents to visit the job site to make sure the information as provided in the H-1B filing is true and accurate. Below is the information as provided by the DOL in its website called H-1B Advisor: https://webapps.dol.gov/elaws/h1b.htm.This website provides guidance on the H-1B classification for temporary employment of foreign workers in the United States in specialty occupations or as fashion models.

We have reproduced most of the website content in this document for your easy reference with added information of our own. This information serves as an educational purpose and shall not be construed as legal advice specific to your case. For any case-specific questions, please consult with us before taking any action.

WARNING: We strongly recommend that you read the entire H-1B Rules and Regulations as contained herein carefully and understand your company's obligations.

NOTIFICATIONS

Notice to Workers of Intention to Employ H-1B Worker
On or within 30 days before you file any labor condition application (LCA), Form ETA 9035E, you must provide a copy of the LCA or the information it contains to the bargaining representative for the workers in this occupation. You must repeat this notice with each new LCA and before you utilize an LCA at a worksite that you did not anticipate and where you did not give notice at the time of filing. You must document and preserve all notices in the PAF.

Where there is no bargaining representative at the other/secondary employer's worksite you must provide notice by one of two methods:

- Physical posting requires two hard copies located in different conspicuous locations at each intended worksite that are accessible to all workers in the sought-after occupation. These postings must remain accessible to all workers for a period of 10 days; or
- Electronic posting may be done for 10 days on any medium accessible to all workers in the intended occupation at the intended place of employment, whether or not they are your employees. Alternatively, you may email the notice directly to each worker in the occupation at the intended place of employment.

If the end client company refuses you access or permission to fulfill the above-described posting requirements, you may not place your H-1B worker at that end client worksite.

You must also give the H-1B worker a copy of the approved LCA no later than the date the worker reports to the worksite.

Termination Notice
When you terminate an H-1B worker prior to the expiration of the worker's visa, you must:

- Give the H-1B worker clear notice of the termination of employment;
- Provide notice of any separation to U.S. Citizenship and Immigration Services (USCIS); and
- Document the above actions.

DHS regulations require that you notify USCIS that the employment relationship has been terminated so that the approval of the petition can be revoked (8 C.F.R. 214.2(h)(11)). These regulations also require you to provide the H-1B employee with an offer of transportation home under certain circumstances (8 C.F.R. 214.2(h)(4)(iii)(E)).

MONETARY ISSUES

Initial Obligation to Pay
Your obligation to pay wages began on the day the H-1B nonimmigrant was available for work or otherwise came under your control, such as reporting for orientation or studying for a licensing exam, or within 30 days of the H-1B worker's entry into the US under H-1B status (or within 60 days from the date USCIS approves the change of status if the H-1B worker is in the US), whichever occurs earlier.

Once the obligation to pay begins, you must pay the required wage rate.

Required Wage Rate
The required wage rate (RWR) is determined on the basis of each LCA, Form ETA 9035E and each H-1B worker. The RWR is the greater of the prevailing wage and the actual wage. It can be hourly or salary depending upon the source you selected and the choice you inserted in section C3 of the LCA. If you selected salary, you must compensate the H-1B worker the full amount of the salary prorated over the annual pay periods. If you selected hourly, you must compensate a full-time H-1B worker for the standard full-time week, usually 40 hours; and you must compensate a part-time H-1B worker no less than the number of hours you specified in both the LCA you obtained and the Form I-129 petition that you filed on behalf of the H-1B nonimmigrant.

Payroll Deductions and Satisfying the Required Wage Rate

- Deductions that are required by law, such as payroll taxes, are certainly permissible.
- Deductions which are reasonable, customary, in compliance with other appropriate laws, disclosed to the worker and made from the wages of U.S. workers as well, such as union dues; health/life insurance and savings/retirement are generally permissible.
- The repayment of loans or advances you provided to the H-1B worker for non-business expenses may be permissible if they are voluntary.
- Whether you may recoup housing costs from an H-1B worker is dependent upon the facts of the arrangement. If you require that an H-1B worker live on site, on your property, in short-term placement, or on business travel, the cost of housing is your business expense and cannot be recouped. However, if an H-1B worker voluntarily lives in housing that you provide, and has agreed in advance to submit to a payroll deduction, it may be a permissible deduction provided it does not exceed your actual costs or fair market value, whichever is less.
- You may never make any deductions for business expenses, such as tools and business travel, from the H-1B worker's required wage rate. An employee's daily home-to-work commuting costs are not your business expense.
- You can never recoup an early cessation penalty from an employee as a payroll deduction or as a separate transaction. And you can never recoup a liquidated damage as a payroll deduction.
- The required wage obligation is satisfied when you pay the RWR to the employee, cash in hand, free and clear, when due, but no less often than monthly. Cash wages paid, for purposes of satisfying the H-1B required wage, consist only of those payments shown in your payroll records as taxable earnings reported to the Internal Revenue Service (IRS), www.irs.gov, with appropriate withholding for the employee's tax paid to the IRS and where you have paid both your share and H-1B worker's taxes to the IRS, as well as any other Federal, State, or local government taxes. Off the books payments, per diem and moneys paid via a federal tax Form 1099 do not satisfy the RWR.
- Other than taxes, all reasonable and customary payroll deductions affecting the RWR must be revealed in advance, voluntary, applied equally to U.S. workers, and in compliance with federal, state, and local laws. Such deductions must be an amount that does not exceed the limits set for garnishment of wages in the Consumer Credit Protection Act (CCPA), under which

garnishment(s) may not exceed 25 percent of an employee's disposable earnings for a workweek.
- If you take any unauthorized deduction from wages, it is considered to be non-payment of that amount of wages. Where you depress the worker's wages below the required wage by imposing on the worker any of your business expenses, the Department will consider the amount to be an unauthorized deduction from wages even if the matter is not shown in the employer's payroll records as a deduction.
- Finally, you may never withhold payment of required wages, including a final pay check.

Benching and Other Nonproductive Periods
In general, you must pay an H-1B worker from the onset of employment until bona fide termination unless the worker experiences a period of nonproductive status due to conditions unrelated to employment which 1) take the nonimmigrant away from work duties at the worker's voluntary request and convenience, or 2) render the nonimmigrant unable to work.

A salaried worker is entitled to a full salary. A full-time hourly worker is entitled to wages for a full-time schedule of hours, usually 40 hours per week. A part-time hourly worker is entitled to no less than the number of hours specified on the I-129 unless there is a range of hours in which case you must base it on the average hours worked in the preceding periods, provided it is within the range stated on the I-129.

Credits
Where the Fair Labor Standards Act (FLSA) does not require the payment of overtime, any overtime that you do pay may be credited toward the required wage rate (RWR). On the other hand, if you employ workers who are subject to the protections of the overtime standard, the overtime premiums that you pay, while required by the FLSA, are not a credit toward the RWR.

Housing and food allowances which you provide would be considered for the benefit of the employee, unless the employee is in travel status or short-term placement, or you arrange for the employee's housing or food principally for your own convenience or benefit. However, in order to take credit toward the required wage rate, you must report the value, not to exceed the fair market value or actual cost, whichever is less, as taxable earnings. This credit must have been voluntarily agreed to in writing by your H-1B worker in advance. You may then recover this credit as a payroll deduction provided it meets all of the above requirements, and it does not exceed the limit on garnishments under the Consumer Credit Protection Act (CPPA).

Per diem is generally understood to be payment for the additional expenses that a worker incurs living away from home. When an employer reports an employee's earning at the end of the year on a Form W-2, per diem is listed separately from taxable income, under 'Misc. non-taxable'. It is not a credit toward the required wage rate.

Once paid, bonuses and supplemental payments serve as a credit toward the required wage rate (RWR). If you are committed to a documented, non-discretionary bonus plan, you may be eligible for a projected pro rata credit toward the RWR.

Commissions, recorded and reported as earnings with appropriate taxes and FICA contributions withheld and paid, are a credit toward the required wage rate.

Typically loans or advances are not reported as taxable earnings; hence they cannot be a credit toward the required wage rate (RWR). Some advances, if they are wage advances, may be processed through your payroll and reported as taxable earnings in which case they are a credit toward the RWR. If you intend to recover a non-creditable loan/advance as a payroll deduction, you must obtain prior written authorization from the H-1B worker, you may not recoup any amount in violation of the limit on garnishments under the Consumer Credit Protection Act (CCPA), and you must ensure that this advance was not for an employer business expense. Immigration related services may be your business expenses. There are both employer mandated immigration fees and H-1B worker immigration expenses. Allowable H-1B worker immigration expenses may be permitted as payroll deductions if they were voluntarily agreed to in writing by your H-1B worker in advance, and they do not exceed the limit on garnishments under the Consumer Credit Protection Act (CCPA).

The reimbursement of daily commuting costs (except where an H-1B worker is in short-term placement) may be a credit toward the required wage rate, but only where it is reported as earnings.

Business expenses are never a credit toward the required wage rate.

- You satisfy the required wage obligation when you pay the required wage rate (RWR) to the employee, cash in hand, free and clear, when due, but no less often than monthly, except for permissible deductions. Cash wages paid, for purposes of satisfying the H-1B required wage, consist only of those payments shown in your payroll records as earnings reported to the Internal Revenue Service (IRS), www.irs.gov, as taxable earnings, with appropriate withholding for the employee's tax paid to the IRS and where you have paid both your share and the H-1B worker's taxes to the IRS, as well as any other federal, state, or local government taxes. Off-the-books payments, nontaxable earnings and moneys paid via tax Form 1099 do not satisfy the RWR.

Bona Fide Termination/End of Wage Obligation
When you terminate an H-1B worker or the worker quits prior to the expiration of the work authorization, there are three steps that you must take to establish a bona fide termination and end your obligation to pay wages:
- Provide or obtain clear written notice of termination;
- Notify USCIS of the separation of the employee; and
- Offer the H-1B worker return transportation home if you terminate the worker prior to the end of their period of authorized admission.

You are responsible for the full payment of the required wage rate to the H-1B worker during all periods of productivity and nonproductivity from the onset of the initial wage obligation until the bona fide termination. It is important that you document and retain evidence of each of the above steps.

Immigration Fees
- The basic fee is an employer's business expense.
- The training and scholarship (petition) fee is not only an employer's business expense, but the law requires that

you may never pass any portion of this fee onto an H-1B worker or third party. This means that an H-1B worker or a third party cannot pay or reimburse you for any part of this fee, whether directly or indirectly, voluntarily or involuntarily. Furthermore, if you seek any damages from a former H-1B worker or third party, you must not include any portion of this fee in the damages, including liquidated damages.

- The fraud prevention and detection fee is an employer's business expense. Similar to the training and scholarship fee, you may never pass any portion of this fee onto an H-1B worker or a third party.
- The premium processing fee is an optional employer business expense where the employer requests that its petition request be processed within 15 business days. In rare instances, an employer may be able to demonstrate to the satisfaction of the WHD that the premium processing was requested specifically at the behest of the nonimmigrant for compelling personal reasons.
- Visa fees are the personal obligation of the nonimmigrant and do not constitute employer business expenses.
- Employer business expenses cannot be recouped from an H-1B worker if it results in reducing the H-1B worker's wages below the required wage.

Expenses

It is important to distinguish between your business expenses and the H-1B worker's expenses. Your business expenses can never be passed on to an H-1B worker if in doing so you reduce the worker's wages below the required wage rate (RWR).

- Attorney fees (LCA, I-129, extension); travel costs while on business travel; travel costs while in short-term placement; cost of tools and equipment; cost of license; cost of training and cost of recruitment and overhead are all clearly your business expenses and you cannot recoup them from an H-1B worker if in doing so you reduce the worker's wages below the RWR. Travel costs while in short-term placement include the worker's actual cost of all travel, lodging, meals and incidental or miscellaneous expenses for each workday and non-workday while in this status, including commuting costs.
- Daily home to work commuting costs are the personal expenses of your H-1B worker.
- Transportation for family members and visa costs for family members are not your business expenses, and you may pass on these expenses in full to your H-1B worker.
- Transportation from home country and/or return may contain both business expense and non-business expense costs. Travel to the U.S. is the responsibility of your H-1B worker and if you provide the transportation or transportation advance, you may recoup that expense. Likewise, if the H-1B worker voluntarily quits before the end of the worker's visa or works until the end of your visa period, the worker's transportation home is the worker's own expense. However, if you terminate the H-1B worker prior to the end of the worker's authorized work period, you are required by INA to offer return transportation as a business expense.
- Food and housing may refer to both business and non-business expenses. Housing and food allowances often meet the test of being principally for the benefit of the H-1B worker and not a business expense. However, when the housing is not optional or is for your convenience such as keeping the worker close at hand, when the worker is in travel status for business purposes, or when the worker is on short-term placement, these expenses are your business expenses and you cannot recoup them if by doing so you reduce the worker's wages below the RWR.

Early Cessation Penalty/Liquidated Damage

You are prohibited from seeking or collecting a penalty, even if agreed upon with the H-1B worker, as a result of the H-1B worker terminating employment before the stipulated end of an employment contract, usually the length of the visa.

Some characteristics of a penalty may include:

- A fixed termination payment regardless of the term of the contract and the length of time during which the contract was in effect before termination;
- An unexplained or unjustified amount of money which is not attributed to any particular cost or loss;
- An amount of money which appears unreasonable in comparison to the worker's earnings; or
- An agreement that is the result of fraud or where it cloaks oppression.

A penalty is distinguishable from liquidated damages which are reasonable approximations or estimates of anticipated or actual damages caused by the H-1B worker's breach of contract. The determination of liquidated damages is to be made on the basis of applicable state law.

Even if an H-1B worker is subject to or owes liquidated damages, you can never take a deduction from the worker's paycheck if in doing so you reduce the worker's wages below the required wage rate (RWR).

Fringe Benefits

You must offer similarly situated H-1B workers fringe benefits on the same basis and in accordance with the same criteria as the benefits you provide to U.S. worker, except you need not offer fringe benefits to an H-1B worker placed in the U.S. for 90 or fewer continuous days if the worker remains on the home country payroll and continues to receive home country benefits without interruption. The home country benefits must be equivalent to those offered by the firm to its similarly employed U.S. workers. You must treat your U.S. workers in the same manner when they are employed outside the U.S. These fringe benefits should be summarized in the public access file.

EMPLOYMENT SITE

Place of Employment

- When an H-1B worker experiences an extended assignment to a fixed site, that fixed site is considered a worksite. Such worksites often differ from your home office and each site requires that you comply with worksite obligations such as obtaining an approved LCA for the area of intended employment, posting notice of the LCA, determining the required wage rate and working conditions, and ensuring that there is no labor strike, lockout, or work stoppage. The LCA specific to this worksite determines a worker's prevailing wage rate.
- Off-site developmental activities, peripatetic activities and short visits away from the office required to fulfill the requirements of a particular job function, do not establish a worksite. The worksite from which you send the H-1B workers remains their worksite, and it is this location that determines the worksite obligations such as obtaining an approved LCA for the area of intended employment, posting notice of the LCA, and determining the required wage rate and working conditions. You must also ensure

that the H-1B worker is not a strikebreaker at any location where the worker performs work.
- A short-term placement option may exist when you need to temporarily place an H-1B worker in a place of employment not listed on an existing LCA. Provided there is no strike or lockout at the temporary location, you may use the H-1B worker's home LCA for up to 30 days in a one year period. If the worker maintains ties to the home worksite, the placement may continue but for no more than a total of 60 days. If the H-1B worker exceeds 30 or 60 days in a one year period at a temporary place in an area of employment, you may not place any other H-1B workers in this area of employment.
  You must pay any H-1B worker on the short-term placement option the worker's actual cost of all travel, lodging, meals, and incidental or miscellaneous expenses for each workday and non-workday while in this status.
- If you already have an approved LCA for the occupation in that geographic area of employment, that LCA will apply. In that case, you do not have a short-term placement. You may at any time file an LCA for the area of employment and comply with its attestations thereby eliminating the short-term placement provisions.

Working Conditions
You must afford working conditions to your H-1B workers on the same basis and in accordance with the same criteria as you afford to your U.S. workers who are similarly employed at the worksite. You must attest to and ensure that your employment of H-1B workers does not adversely affect the working conditions of similarly employed U.S. worker employees. Working conditions include matters such as hours, shifts, vacation periods, and benefits such as seniority-based preferences for training programs and work schedules. Protected working conditions do not include the right to a job.

Displacement of U.S. Workers
Applicable to only H-1B dependent employers and/or H-1B willful violators, the Immigration and Nationality Act (INA) provides limited protections against the displacement of U.S. workers by H-1B workers. Displacement under the INA is the layoff of a U.S. worker from a job that is essentially the equivalent of the job for which the H-1B worker is sought in the same area of employment.

All employers are subject to the prohibition against displacing one of their own U.S. workers during the period starting 90 days before and ending 90 days after the filing of an H-1B visa petition or extension in conjunction with a willful violation of any of the provisions pertaining to wages/working conditions, strike/lockout, notification, labor condition application specificity, displacement, or recruitment (20 C.F.R. §655.805(a)(2) through (9)) or a willful misrepresentation of a material fact on the labor condition application (20 C.F.R. 655.805(a)(1)).

Employers that violate these provisions are subject to a super penalty up to $35,000 per violation and a three-year debarment from all immigration programs as well as further administrative remedies.

Strikes and Lockouts
You must attest that there is no labor dispute strike, lockout or work stoppage in the occupational classification of employees of the employer at the intended place of employment.

If a strike or lockout of workers in the same occupational classification as the H-1B worker subsequently occurs at the place of employment, you must notify Department of Homeland Security (DHS) and may not employ any H-1B worker at that site until cleared by DHS.

Portability
Portability allows an employed H-1B (not applicable to H-1B1 or E-3) worker to enter into employment with a new H-1B employer. The worker benefits by being able to change jobs without the risk of violating status, and the new H-1B employer benefits by being able to employ an H-1B worker without waiting the normal adjudication period. Questions concerning the process for invoking portability should be directed to USCIS.

The H-1B worker may enter into employment with the new H-1B employer as soon as the new employer files a nonfrivolous Petition for a Nonimmigrant Worker (Form I-129/I-129W).

RECORDKEEPING AND ADMINISTRATION

Public Access
You must make the following materials available to the public at your principal place of business in the U.S. or at the place of employment, whichever you designated in Section G of the labor condition application (LCA), within one working day of filing an LCA (Form ETA 9035E) with the DOL:
1. The LCA
2. Wage rate to be paid to H-1B worker
3. Full and clear explanation of your actual wage system
4. Prevailing wage rate and its source
5. Documentation that you satisfied the notice requirement
6. Summary of fringe benefits to your U.S. workers and H-1B workers
7. In the event you have a corporate change: a sworn statement by a responsible official of your new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCA and its date of certification, and a description of the actual wage system and Employment Identification Number (EIN) of the new employing entity.
8. List of entities included as a "single employer" under the Internal Revenue Code.

Required Records
Some records of interest to the Wage and Hour Division (WHD) are required to be maintained to comply with other laws [e.g., the Fair Labor Standards Act or the Internal Revenue Code (IRC)]. You must maintain the following records and make them available to the WHD upon request.

For each H-1B worker and each U.S. worker in the same occupation at an H-1B worker's place of employment:

1. Name, address, occupation, social security number, period of employment in each place and area of employment, entire petition package, all subsequent LCAs used for each worker, date H-1B nonimmigrant entered into the U.S., date H-1B worker entered into employment, documentation in support of any unpaid periods, documentation of termination, including notice to USCIS and offer of transportation home, if applicable.

2. Rate of pay, hours of work, gross pay, deductions, net pay, and documentation of withholding taxes remitted to taxing authorities and benefit deductions to benefit providers.
3. Fringe benefit plan(s) offered and provided.
4. And all of the records required for public access, such as:
    - All LCAs.
    - Wage rate to be paid to H-1B worker.
    - Full and clear explanation of your actual wage system (including demonstration of its application).
    - Prevailing wage rate and its source (including demonstration of its acceptability).
    - Documentation that the notice requirement was satisfied.
    - Summary of your fringe benefits to U.S. workers and H-1B workers.
    - In the event you have a corporate change: a sworn statement by a responsible official of your new employing entity that it accepts all obligations, liabilities and undertakings under the LCAs filed by the predecessor employing entity, together with a list of each affected LCA and its date of certification, and a description of the actual wage system and Employer Identification Number (EIN) of your new employing entity.
    - List of entities included as a "single employer" under the Internal Revenue Code.

Record Retention
You must retain required records at either your principal place of business in the U.S. or at the place of employment, whichever you designated in Section G when you filed the labor condition application (LCA).

You must retain specific H-1B records for:

- a period of one year beyond the last date on which you employed any H-1B worker under the LCA, or
- if you did not employ any H-1B workers under the LCA, one year from the date the LCA expired or you withdrew it.

You must retain all payroll records for a period of three years from the date(s) of the creation of the record(s). If an enforcement action is commenced, you must retain all records until the enforcement proceeding is completed. (See 20 C.F.R. §655 Subpart I)

Change of Business Identity
When you change your identity or structure as the result of an acquisition, merger, spin-off, or other such action, you may retain H-1B workers transferred by the change, provided you maintain a list of the H-1B workers transferred to the new employing entity and includes in the public access file the following documentation:

1. A list of each affected labor condition application (LCA) and its date of certification;
2. A description of the new entity's actual wage system;
3. The new Employer Identification Number (EIN) even if no change; and
4. A sworn statement by an authorized representative of the new employing entity expressly acknowledging it will assume all obligations, liabilities, and undertakings arising from or under attestations made in each certified and still effective LCA filed by the predecessor entity, specifically that it will:
    - Abide by the DOL's H-1B regulations applicable to the LCAs;
    - Maintain a copy of the statement in the public access file; and
    - Make the document available to any member of the public or the Department upon request.

When you seek to hire new H-1B workers or obtain an extension of status, you must file new LCAs and petitions. At this time you must redetermine your H-1B dependent employer status.

WORKER PROTECTION

Whistleblower Protection
You are prohibited from retaliating against any current or former U.S. worker or H-1B worker or job applicant because the employee/applicant has disclosed any information to you or any other person or entity about your alleged failure to comply with any of the H-1B provisions, or because the employee has sought or cooperated in an enforcement activity.

Retaliation includes intimidating, threatening, restraining, coercing, blacklisting, discharging, or discriminating in any other manner against a worker who has exercised worker rights under the H-1B program.

Employers that violate these provisions are subject to penalties up to $5,000 per violation and a two-year debarment from all immigration programs as well as further administrative remedies. 20 C.F.R. Part 655.801.

Displacement of U.S. Workers
Applicable to only H-1B dependent employers and/or H-1B willful violators, the Immigration and Nationality Act (INA) provides limited protections against the displacement of U.S. workers by H-1B workers. Displacement under the INA is the layoff of a U.S. worker from a job that is essentially the equivalent of the job for which the H-1B worker is sought in the same area of employment.

All employers are subject to the prohibition against displacing one of their own U.S. workers during the period starting 90 days before and ending 90 days after the filing of an H-1B visa petition or extension in conjunction with a willful violation of any of the provisions pertaining to wages/working conditions, strike/lockout, notification, labor condition application specificity, displacement, or recruitment (20 C.F.R. §655.805(a)(2) through (9)) or a willful misrepresentation of a material fact on the labor condition application (20 C.F.R. 655.805(a)(1)).

Employers that violate these provisions are subject to a super penalty up to $35,000 per violation and a three-year debarment from all immigration programs as well as further administrative remedies.

ENFORCEMENT

Investigation Authority
There are four specific authorities by which the Wage and Hour Division (WHD) can conduct an investigation of an H-1B employer:

1. A complaint from an aggrieved party or organization alleging a violation of the regulations (Subpart H and I of 20 C.F.R. 655) that has occurred within the 12 month period prior to the filing of a complaint.
2. Credible information from a known source that an H-1B employer willfully failed to meet certain LCA conditions, has engaged in a pattern or practice of failures to meet such conditions, or has committed a substantial failure

to meet such conditions that affects multiple employees. The conditions include:
wages, benefits, working conditions, strike/lock out, displacement of U.S. workers, displacement of U.S. workers by secondary employer*, and recruitment of U.S. workers*.
(* only applies to H-1B dependent employers and willful violator employers). Examples of a credible source include:

A. Neighboring non-competitor who was told by H-1B workers that they were not being paid for travel expenses;
B. Payroll service who was instructed to illegally reduce the wages of H-1B workers;
C. Community activist who reports that H-1B workers have reported that they are not paid for all hours of work;
D. Police officer who reports that H-1B workers did not receive their last paychecks.

3. Random investigation of an H-1B employer who was previously determined (within the past 5 years) by Department of Labor or Department of Justice to be a willful violator of the LCA attestations.
4. Personal certification by the Secretary of Labor that there is reasonable cause to believe that the H-1B employer is not in compliance with the LCA attestations.

Filing a Complaint
Only an aggrieved party or a credible source can file a complaint with the Wage and Hour Division (WHD). The allegations contained in the complaint must have occurred within the 12 months immediately preceding the receipt of the complaint by DOL.

In addition to completing the complaint form WH-4, the complaining party should provide as much detailed information in support of the allegations as is available. This information helps the WHD determine whether there is reasonable cause to initiate an investigation.

Instructions for completing a complaint form WH-4 and contacting the appropriate local WHD office may be found at https://www.dol.gov/esa/forms/whd/fts_wh4.htm.

A complainant's identity will be kept confidential to the maximum extent permitted by law.

Good Faith Defense/Industry Standards Defense
The H-1B Visa Reform Act of 2004 amendments to the INA provide a provision under which an H-1B employer is considered to have complied in good faith with the program requirements notwithstanding a technical or procedural failure to meet such requirements if the employer:

- Made a good faith attempt to comply;
- Voluntarily corrected the failure within 10 business days of having it explained by the Department of Labor or another enforcement agency; and
- Has not engaged in a pattern or practice of willful violations.

This does not apply to failures to meet attestation requirements.

The use of this defense can result in a no violation letter from the Administrator.

These amendments do not absolve the employer of the obligation to pay any back wages owed to an H-1B employee. However, they do provide a waiver of civil monetary penalties (CMPs) and debarment if an employer can demonstrate that its failure to pay the prevailing wage was based upon a calculation consistent with recognized industry standards and practices, provided the employer has not engaged in a pattern or practice of willful violations under the H-1B program.

Remedies
Regulations authorize the Wage and Hour Division (WHD) to seek compliance and back wage restitution, penalties, debarment and other remedies where appropriate.

Back wages are determined based upon the facts of the investigation and are computed to compensate an employee for a variety of monetary losses where the H-1B worker did not receive free and clear payment of the required wage rate or benefits, or where the worker was required to pay impermissible fees or expenses.

Sometimes remedies require an H-1B employer to post a notice where this requirement was not satisfied prior to the WHD intervention or to restore employment to a U.S. worker.

The statute and the regulations require that civil money penalties (CMPs) and debarment from all immigration programs be imposed when certain provisions are violated. CMPs are based upon the severity of the violation and the number of times the violation recurred or the number of affected employees. These CMPs can be increased or decreased by factors such as:

- The size of the employer;
- Previous history of violations by the employer under the INA and the regulations found at Subparts H and I of 20 C.F.R. 655);
- Efforts made by the employer in good faith to comply with these provisions;
- The employer's explanation of the violations;
- The employer's commitment to future compliance;
- The extent to which the employer achieved a financial gain due to the violations, or the potential financial loss, potential injury or adverse effect with respect to other parties.

A CMP can be assessed not to exceed $1,000.00 or $5,000.00 or $35,000.00, depending on the violation.

Many violations also result in debarment from all immigration programs ranging from one to two years (three years under the super penalty provision). Such debarment is non-discretionary and based upon the nature and seriousness of the violations.

Debarment of an H-1B employer does not invalidate the existing visas of H-1B workers, but the employer will be unable to seek any extensions or green cards during the period of debarment.

Specific CMPs and terms of debarment are listed by violation at 20 C.F.R.§655.810(b) and (d).

Appeals Process
At the conclusion of an investigation by the Wage and Hour Division (WHD), the H-1B employer and all other interested parties will be sent a letter of final determination by the Administrator which sets forth a summary of and the remedies necessary to address any violations disclosed by the investigation. The employer will also receive a summary of unpaid wages detailing the amount of restitution due to

each employee who was not properly compensated. If the investigation disclosed no violations, the Administrator will issue a no violation determination letter.

The determination letter will also advise all of the parties of their rights to request a hearing if they dispute the findings and the procedure for filing such an appeal. This appeal must be made to the Chief Administrative Law Judge (ALJ) in Washington, D.C., and not to the local or national WHD. If there is no appeal, the determination letter becomes the final and non-appealable order, thus the final agency action of the Secretary of Labor.

If the Chief ALJ accepts the appeal, a hearing will be scheduled. After a hearing the presiding ALJ will issue a decision and order which can be appealed to the Administrative Review Board (ARB) of the Department within 30 calendar days. After a review, the ARB either declines to entertain the appeal or reviews the record and issues its own final decision and order.

Once there is a final agency action, all back wages and CMPs are due in full and the Administrator notifies the Office of Foreign Labor Certification (OFLC) of the Employment and Training Administration (ETA) and the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (DHS) about any periods of debarment. During the debarment period, OFLC will not approve any LCAs and USCIS will not process any petitions for the named H-1B employer.

Additional Obligations for H-1B Dependent Employers or Willful Violators
(excluding H-1B1 and E-3 nonimmigrants)
The following additional obligations generally do not apply to the employment of exempt H-1B workers or labor condition application(s) (LCA) approved exclusively in support of exempt workers. An exempt H-1B worker is one who receives at least $60,000 per year in wages or has attained a master's or higher degree in a specialty related to the intended H-1B employment, and who is or will be employed pursuant to an LCA approved exclusively in support of exempt H-1B workers.

However, no such exemption from these obligations is available for an H-1B worker hired between February 17, 2009 and February 16, 2011 if the employer has received funding under the Troubled Assets Relief Program (TARP) or Section 13 of the Federal Reserve Act.

Recruitment of U.S. Workers
U.S. workers must be given fair consideration for jobs, and H-1B workers must not be favored over U.S. workers. All H-1B dependent employers or willful violators are required to recruit U.S. workers in good faith in accordance with their industry standards. The recruitment methods that an employer uses must include internal and/or external recruitment, and at least some active recruitment. Passive recruitment by itself is never sufficient.

The employer must conduct recruitment prior to filing an labor condition application (LCA), petition, or extension of status supported by the LCA, and must offer compensation at no less than the required wage rate (RWR). This regulation applies only to H-1B workers and
not H-1B1 or E-3 workers.

The employer shall not apply otherwise-legitimate screening criteria in a manner which would skew the recruitment process in favor of H-1B nonimmigrants. Legitimate criteria mean criteria which are:

- legally recognized and do not violate any other laws;
- relevant to the job's duties and responsibilities; and
- normal and customary based upon the practices of the industry.
- The employer must maintain documentation of its recruitment, as well as applications, interview notes, job offers and responses. The employer must have a summary of its recruitment methods and time frames in the public access file.

The additional obligations above generally do not apply to employers who file an LCA approved exclusively in support of exempt H-1B workers. An exempt H-1B worker is one who receives at least $60,000 per year in wages or has attained a master's or higher degree in a specialty related to the intended H-1B employment and who is or will be employed pursuant to an LCA approved exclusively in support of exempt H-1B workers.

However, no such exemption from these obligations is available for an H-1B worker hired between February 17, 2009 and February 16, 2011 if the employer has received funding under the Troubled Assets Relief Program (TARP) or Section 13 of the Federal Reserve Act.

Offer of Employment to U.S. Applicant
All H-1B dependent employers and/or willful violators are required to offer a job to any U.S. applicant who applies and is equally or better qualified for the job than the H-1B nonimmigrant. This regulation applies only to H-1B workers and not H-1B1 or E-3 workers. Questions or complaints concerning any non-selection should be referred to:

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel (OSC) for Immigration-Related Unfair Employment Practices
950 Pennsylvania Avenue, NW
Washington, DC 20530

The U.S. Department of Justice also administers several statutes concerning employment discrimination based on national origin, citizenship status, and immigration document abuse.

You may contact the OSC at 800-255-7688 and visit their web site to view FAQs at www.USDOJ.gov/crt/osc.

Direct Displacement of U.S. Workers, Secondary Displacement of U.S. Workers, and Secondary Displacement Inquiry
The following additional obligations apply only to H-1B dependent employers and H-1B willful violators. They do not apply to the employment of exempt H-1B workers or the filing of labor condition applications (LCAs) approved exclusively in support of exempt workers. An exempt H-1B worker is one who receives at least $60,000 per year in wages or has attained a master's or higher degree in a specialty related to the intended H-1B employment and who is or will be employed pursuant to an LCA approved exclusively in support of exempt H-1B workers.

However, no such exemption from these obligations is available for an H-1B worker hired between February 17, 2009 and February 16, 2011 if the employer has received funding under the Troubled Assets Relief Program (TARP) or Section 13 of Federal Reserve Act.

If you are an H-1B dependent employer, you are subject to the prohibition against displacing any of your own U.S. workers with an H-1B worker during the period starting 90 days before and ending 90 days after the filing of an H-1B visa petition or extension. Displacement under the INA is the layoff of a U.S. worker from a job that is essentially the equivalent of the job for which the H-1B worker is sought in the same area of employment.

Often an H-1B employer sends an H-1B worker to a secondary employer's worksite. The displacement prohibition extends to the displacement of a U.S. worker at this other/secondary employer's worksite where there are indicia of an employment relationship between the H-1B worker and the other/secondary employer even though there is no per se employment relationship. Indicia of employment are determined on a factual basis depending upon the economic realities and include factors such as the right to control the performance of the job. The regulations at C.F.R. §655.738(d)(2) provide further measures of indicia. The prohibition against secondary displacement extends from the period beginning 90 days before and ending 90 days after the placement of the H-1B worker at the site.

This packet is designed to gather the necessary information for us to assist your company in preparing an H-1B visa petition for filing with USCIS. Therefore it is important that the information be as accurate as possible.

The person who has hiring authority for your company should complete the H-1 Packet (Part A – Employer). The foreign national will need to complete H-1B Packet (Part B – FN). Please send the completed packets (Employer and Employee Sections) as well as all supporting documentation (see checklist following each section) to BRAVLIN PC, 4001 N. 9th Street, Suite 222, Arlington, VA 22203, 703 243 1474 (work), 703 243 1494 (fax), INFO@BRAVLIN.COM.

PLEASE BE ADVISED THAT RETURNING THE H-1B PACKET TO US DOES NOT ESTABLISH ATTORNEY-CLIENT RELATIONSHIP. NO WORK WILL BE PERFORMED UNTIL A MUTUALLY EXECUTED WRITTEN RETAINER AGREEMENT HAS BEEN SIGNED AND THAT THE LEGAL FEE HAS BEEN PAID.

DECLARATION BY THE FOREIGN NATIONAL

I, the foreign national named in the questionnaire below, declare that I have carefully reviewed the entire H-1B packet and the information as contained herein. I certify that I fully understand the obligations associated with the H-1B filing and that I will fully comply with the rules and regulations as explained above.

FOREIGN NATIONAL

Click or tap here to enter text.

Signature

Date: Click or tap to enter a date.

Please return this completed request packet to:

BRAVLIN PC
4001 N. 9th Street, Suite 222
Arlington, VA 22203
TEL: 703 243 1474
FAX: 703 243 1494
E-mail: INFO@BRAVLIN.COM

H-1B REQUEST FORM – PART B
To Be Completed by FOREIGN NATIONAL

Legal Name of the Foreign National:

Last Name: Click or tap here to enter text. First Name: Click or tap here to enter text.

Middle Name: Click or tap here to enter text. Any Alias, Nick Name, aka: Click or tap here to enter text.

Name of the Petitioning Employer: Click or tap here to enter text.

Date of Birth: (Month, Day, Year) Click or tap to enter a date. GENDER: Male Female	Country of Birth: Click or tap here to enter text. Province of Birth: Click or tap here to enter text. US Social Security Number, if applicable: Click or tap here to enter text.	List All Countr(ies) of Citizenship: Click or tap here to enter text.

Current Address in the United States, if Applicable: Click or tap here to enter text.

Telephone: Click or tap here to enter text. Email: Click or tap here to enter text.

(List Additional Contact Number, if applicable: Click or tap here to enter text.

Foreign Address: Click or tap here to enter text.
(Include Street Address, Apt #, City, State, Country, Postal Code)

Passport Number: Click or tap here to enter text.

Date Issued: Click or tap to enter a date. Date Expired: Click or tap to enter a date.

Current Immigration Status as shown on the I-94: Click or tap here to enter text.

Date of Your Last Entry to the U.S.: Click or tap to enter a date.

I-94 Number: Click or tap here to enter text.

I-94 Expiration Date: Click or tap here to enter text.

Alien Registration Number, if any: Click or tap here to enter text.

H-1B PROCESSING (Select the manner in which you plan to obtain your H-1B status):

At U.S. Embassy/Consulate located:
Click or tap here to enter text.(City) Click or tap here to enter text.(Country)

Change of status to H-1B from another visa status
(You must not travel abroad while change of status request is pending)

H-1B extension (check this option if you are already in the U.S. working under H-1B status for the petitioning employer)

H-1B transfer (check this option if you are working for another H-1B employer and is seeking the authorization to work for the petitioning employer). LAST DATE OF EMPLOYMENT WITH CURRENT H-1B EMPLOYER: Click or tap here to enter text. (Your last date of employment MUST NOT END before the start date of your employment with the petitioning employer as identified in the Employer's H-1B packet)

Concurrent H-1B Employment (check this option if you are already working under H-1B status for another H-1B employer and you would like to concurrently work for the petitioning employer)

PUBLIC CHARGE WORKSHEET

U.S. law requires that foreign nationals demonstrate financial self-reliance (The Public Charge Rule). A foreign national is inadmissible if s/he is determined "likely at any time to become a public charge." The law lists five factors to be taken into account: (1) age; (2) health; (3) "family status;" (4) assets, resources and financial status; and (5) education and skills.

The Public Charge Rule applies not only to adjustment applicants but also to those seeking a change or extension of nonimmigrant status. DHS will examine whether the foreign national received **12 months or more** of public benefits during any 36-month period while in the nonimmigrant status he or she wishes to change or extend.

Have you received, are your receiving, or are you currently certified to receive, the following public benefits? Yes No . If yes, please select all that apply

Any Federal, State, local or tribal cash assistance for income maintenance
Supplemental Security Income (SSI)
Temporary Assistance for Needy Families (TANF)
General Assistance (GA)
Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps")
Section 8 Housing Assistance under the Housing Choice Voucher Program
Section 8 Project=Based Rental Assistance (including Moderate Rehabilitation)
Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.
Federally-Funded Medicaid

provide information about the public benefits below.

Type of Benefit: Click or tap here to enter text.
Agency that Granted the Benefit: Click or tap here to enter text.
Date you started receiving the benefit, or if certified, date you will start receiving the benefit (mm/dd/yyyy): Click or tap here to enter text.
Date the benefit ended or expires (mm/dd/yyyy): Click or tap here to enter text.

Please use space here for additional benefits: Click or tap here to enter text.

If you answered "Yes" to the above question, do any of the following apply to you? Provide the evidence to support this.

You are enlisted in the Armed Forces, or is serving in active duty or in the Ready Reserve Component of the US Armed Forces.

You are the spouse or child of an individual who is enlisted in the Armed Forces, or who is serving in active duty or in the Ready Reserve Component of the US Armed Forces.

At the time you received the public benefits, you (or your spouse or parent) were enlisted in the Armed Forces, or was serving in active duty or in the Ready Reserve Component of the US Armed Forces.

At the time you received the public benefits, you were present in the US in a status exempt from the public charge ground of inadmissibility.

At the time you received the public benefits, you were present in the US after being granted a waiver of the public charge ground of inadmissibility.

You are a child currently residing abroad who entered the US with a nonimmigrant visa to at

PRIOR H-1B STATUS AND IMMIGRATION RELATED QUESTIONS:

Has anyone ever filed an H-1B visa petition for you?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever been denied H-1B status?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever held any H and/or L status?
Yes No . If yes, please list all periods of your stay in any H or L status [e.g. H-1B, H-2B, H-3, excluding H-4 & L-2], starting from the very first day of entering the US under that H or L status.
Period of Stay: Click or tap here to enter text.

If you are or were under H-1B status, did you get your H-1B status through H-1B Cap Exempt Petitioner? Yes No

IMMIGRATION RELATED QUESTIONS (THESE QUESTIONS APPLY TO ALL YOUR STAYS IN THE US, INCLUDING YOUR PAST STAY, IF APPLICABLE)

Have you ever been employed in the U.S. since last admitted or granted an extension or change of status?
Yes No . If yes, explain whom you worked for in Experience History the following section.

Have you ever worked without permission in the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever been denied admission to the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever been denied a visa to the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you violated the terms or conditions of your immigration stay?
Yes No (If yes, explain): Click or tap here to enter text.

Are you presently or have you ever been in removal, exclusion, rescission, or deportation proceedings?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever been ordered deported, excluded or removed from the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever been arrested, charged, cited, or convicted for violation of any law, including immigration violation?
Yes No (If yes, explain): Click or tap here to enter text.

Have you been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency, or similar action?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever exercised diplomatic immunity to avoid prosecution for a criminal offense in the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you received public assistance in the United States from any source?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever within the past 10 years been a prostitute or procured anyone for prostitution?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever engaged in any unlawful commercialized vice, including, but not limited to illegal gambling?
Yes No (If yes, explain): Click or tap here to enter text.

Have you knowingly engaged, included, assisted, abetted, or aided any alien to try to enter the United States illegally?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever illicitly trafficked in any controlled substances, or knowingly assisted, abetted, or colluded in the illicit trafficking of any controlled substance?
Yes No (If yes, explain): Click or tap here to enter text.

PETITIONS FOR PERMANENT RESIDENCY

Has an **immigrant visa petition** or a **permanent labor certification application** (PERM) ever been filed on your behalf?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever filed an adjustment of status application (I-485) or an immigrant visa application?
Yes No (If yes, explain): Click or tap here to enter text.

J-1 STATUS

Have you ever held a J-1 status?
No
Yes. Did/do you have a two-year foreign residency requirement?
No
Yes. If yes, have you fulfilled the foreign residency req't or obtained a waiver?
Yes (attach a copy of the I-612 waiver, or if you have fulfilled the residency requirement by residing in your home country, please provide us with the period of your residency after J-1 visa stay: Click or tap here to enter text.. Please also provide the evidence of your physical presence in your home country)
No (Please explain): Click or tap here to enter text.

Notice: if you are subject to two-year foreign residency requirement and you have not obtained the J-1 waiver or fulfilled your foreign residency requirement, you will not be eligible for H-1B visa status.

EDUCATION (list only your college/university level education, starting with your highest level of education)

Name of the institution #1: Click or tap here to enter text.

Complete Address, including State, Country and Zip Code: Click or tap here to enter text.

Year education completed: Click or tap here to enter text.

Specific degree conferred: Click or tap here to enter text. Major Field(s) of Study: Click or tap here to enter text.

Name of the institution #2: Click or tap here to enter text.

Complete Address, including State, Country and Zip Code: Click or tap here to enter text.

Year education completed: Click or tap here to enter text.

Specific degree conferred: Click or tap here to enter text. Major Field(s) of Study: Click or tap here to enter text.

Name of the institution #3: Click or tap here to enter text.

Complete Address, including State, Country and Zip Code: Click or tap here to enter text.

Year education completed: Click or tap here to enter text.

Specific degree conferred: Click or tap here to enter text. Major Field(s) of Study: Click or tap here to enter text.

If you have a master's degree that is earned from a US university or college, is your university a public or nonprofit institution that is accredited by a nationally recognized accrediting agency or association?
Yes No
Degrees acquired from private for-profit educational institutions will not be eligible for US earned master's degree cap.

EMPLOYMENT HISTORY
Note: you may submit your resume in lieu of completing the section below.

DATES OF EMPLOYMENT	EMPLOYERS FOR WHOM YOU HAVE WORKED (include address)	U.S. IMMIGRATION STATUS (if any)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

DEPENDENTS

I-129 petition only covers your status. Your family members must complete and submit a separate application to change and/or extend their nonimmigrant visa status.

Please inform BRAVLIN PC of additional family members needing to change status to H-4. Form I-539 (Application to Change/Extend Non-immigrant Status) will be completed for any members of your family currently in the United States in another non-immigrant visa status. Please provide to BRAVLIN PC the following required documentation:

- **Copies of passports, visa stamp pages, and I-94 cards**
- **Check or money order in the amount of $370.00 payable to the "US Department of Homeland Security" for the family member(s) in the United States.**
- **Check or money order in the amount of $85.00 payable to the ""US Department of Homeland Security" for EACH family member(s) in the United States.**
- **Birth Certificate and/or Marriage Certificate to establish family relationship.**

*Remember, only a wife/husband/son/daughter ** is considered a dependent for immigration purpose. Mothers/fathers/nieces/nephews, for example, do not qualify as dependents. ONLY documentation for your immediate family members APPLYING FOR H-4 status should be included with this petition. (** dependent child will lose his/her respective dependent non-immigrant status once s/he reaches the age of 21 or marries, whichever occurs first. Please consult with a legal counsel if your child is about to age out)*

DEPENDENT FAMILY MEMBER PERSONAL INFORMATION SHEET
TO BE COMPLETED BY THE DEPENDENT (EACH DEPENDENT MUST COMPLETE ONE INFORMATION SHEET PER INDIVIDUAL. USE ADDITIONAL SHEET IF NECESSARY)

Legal Name of the Family Member:

Last Name: Click or tap here to enter text. First Name: Click or tap here to enter text.

Middle Name: Click or tap here to enter text. Any Alias, Nick Name, aka: Click or tap here to enter text.

Relationship to the Principal Alien: Click or tap here to enter text.

Date of Birth: (Month, Day, Year) Click or tap to enter a date. GENDER: Male Female	Country of Birth: Click or tap here to enter text. Province of Birth: Click or tap here to enter text. US Social Security Number, if applicable: Click or tap here to enter text.	List All Countr(ies) of Citizenship: Click or tap here to enter text.

Current Address in the United States, if Applicable: Click or tap here to enter text.

Telephone: Click or tap here to enter text. Email: Click or tap here to enter text.

(List Additional Contact Number, if applicable: Click or tap here to enter text.

Foreign Address: Click or tap here to enter text.
(Include Street Address, Apt #, City, State, Country, Postal Code)

Passport Number: Click or tap here to enter text.

Date Issued: Click or tap to enter a date. Date Expired: Click or tap to enter a date.

Current Immigration Status as shown on the I-94: Click or tap here to enter text.

Date of Your Last Entry to the U.S.: Click or tap to enter a date.

I-94 Number: Click or tap here to enter text.

I-94 Expiration Date: Click or tap here to enter text.

Alien Registration Number, if any: Click or tap here to enter text.

PUBLIC CHARGE WORKSHEET

U.S. law requires that foreign nationals demonstrate financial self-reliance (The Public Charge Rule). A foreign national is inadmissible if s/he is determined "likely at any time to become a public charge." The law lists five factors to be taken into account: (1) age; (2) health; (3) "family status;" (4) assets, resources and financial status; and (5) education and skills.

The Public Charge Rule applies not only to adjustment applicants but also to those seeking a change or extension of nonimmigrant status. DHS will examine whether the foreign national received **12 months or more** of public benefits during any 36-month period while in the nonimmigrant status he or she wishes to change or extend.

Have you received, are your receiving, or are you currently certified to receive, the following public benefits? Yes No . If yes, please select all that apply

Any Federal, State, local or tribal cash assistance for income maintenance
Supplemental Security Income (SSI)
Temporary Assistance for Needy Families (TANF)
General Assistance (GA)
Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps")
Section 8 Housing Assistance under the Housing Choice Voucher Program
Section 8 Project=Based Rental Assistance (including Moderate Rehabilitation)
Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.
Federally-Funded Medicaid

provide information about the public benefits below.

Type of Benefit: Click or tap here to enter text.
Agency that Granted the Benefit: Click or tap here to enter text.
Date you started receiving the benefit, or if certified, date you will start receiving the benefit (mm/dd/yyyy): Click or tap here to enter text.
Date the benefit ended or expires (mm/dd/yyyy): Click or tap here to enter text.

Please use space here for additional benefits: Click or tap here to enter text.

If you answered "Yes" to the above question, do any of the following apply to you? Provide the evidence to support this.

You are enlisted in the Armed Forces, or is serving in active duty or in the Ready Reserve Component of the US Armed Forces.

You are the spouse or child of an individual who is enlisted in the Armed Forces, or who is serving in active duty or in the Ready Reserve Component of the US Armed Forces.

At the time you received the public benefits, you (or your spouse or parent) were enlisted in the Armed Forces, or was serving in active duty or in the Ready Reserve Component of the US Armed Forces.

At the time you received the public benefits, you were present in the US in a status exempt from the public charge ground of inadmissibility.

At the time you received the public benefits, you were present in the US after being granted a waiver of the public charge ground of inadmissibility.

You are a child currently residing abroad who entered the US with a nonimmigrant visa to at

IMMIGRATION RELATED QUESTIONS (THESE QUESTIONS APPLY TO ALL YOUR STAYS IN THE US, INCLUDING YOUR PAST STAY, IF APPLICABLE)

Have you ever been employed in the U.S. since last admitted or granted an extension or change of status?
Yes No . (If yes, list the period of employment, name and address of the employer(s), salary received): Click or tap here to enter text.

Have you ever worked without permission in the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever been denied admission to the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever been denied a visa to the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you violated the terms or conditions of your immigration stay?
Yes No (If yes, explain): Click or tap here to enter text.

Are you presently or have you ever been in removal, exclusion, rescission, or deportation proceedings?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever been ordered deported, excluded or removed from the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever been arrested, charged, cited, or convicted for violation of any law, including immigration violation?
Yes No (If yes, explain): Click or tap here to enter text.

Have you been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency, or similar action?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever exercised diplomatic immunity to avoid prosecution for a criminal offense in the United States?
Yes No (If yes, explain): Click or tap here to enter text.

Have you received public assistance in the United States from any source?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever within the past 10 years been a prostitute or procured anyone for prostitution?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever engaged in any unlawful commercialized vice, including, but not limited to illegal gambling?
Yes No (If yes, explain): Click or tap here to enter text.

Have you knowingly engaged, included, assisted, abetted, or aided any alien to try to enter the United States illegally?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever illicitly trafficked in any controlled substances, or knowingly assisted, abetted, or colluded in the illicit trafficking of any controlled substance?
Yes No (If yes, explain): Click or tap here to enter text.

PETITIONS FOR PERMANENT RESIDENCY

Has an immigrant visa petition or a permanent labor certification application ever been filed on your behalf?
Yes No (If yes, explain): Click or tap here to enter text.

Have you ever filed an adjustment of status application (I-485) or an immigrant visa application?
Yes No (If yes, explain): Click or tap here to enter text.

J-1 STATUS

Have you ever held a J-1 status?
No
Yes. Did/do you have a two-year foreign residency requirement?
No
Yes. If yes, have you fulfilled the foreign residency req't or obtained a waiver?
Yes (attach a copy of the I-612 waiver, or if you have fulfilled the residency requirement by residing in your home country, please provide us with the period of your residency after J-1 visa stay: Click or tap here to enter text.. Please also provide the evidence of your physical presence in your home country)
No (Please explain): Click or tap here to enter text.

Notice: if you are subject to two-year foreign residency requirement and you have not obtained the J-1 waiver or fulfilled your foreign residency requirement, you will not be eligible for H visa status.

Please provide any additional information such as the name, date of birth and place of birth of your child(ren), and any other factors that you think may adversely affect your family's eligibility for H-4 status (e.g. children reaching the age of 21 or planning to get married, etc.)

Click or tap here to enter text.

I certify that, to the best of my knowledge, the information provided in Part B of this request form is true and accurate.

Click or tap here to enter text.

Signature of Foreign National

Click or tap here to enter text.

Date

Additional Documentation to Be Submitted by Foreign National

Please submit the following documentation:

1. ***Resume***
2. ***Copy of your university undergraduate transcripts as well as any post-graduate transcripts***
3. ***Photocopy of your undergraduate diploma as well as any post-graduate diplomas***
4. ***Foreign credential evaluation, if you already have one.*****
5. ***A current copy of your I-20/DS-2019, and/or EAD if you are under F-1 status (formerly known as IAP-66, if applicable)***
6. ***Copy of your current passport data pages***
7. ***Copy of your I-94***
8. ***Copy of all of your previous H-1B approval notices and complete copy of the visa petition(s), if applicable***
9. ***Most recent pay statements and latest W-2***
10. ***Copy of any other immigration related documents, if applicable***

*****PLEASE NOTE!! If your transcripts and diplomas are from universities outside the United States, you will need to have a credential evaluation done by a foreign credential evaluation agency, to make sure that your education is equivalent to a bachelor's degree from an accredited US institution. If you do not have the foreign credential evaluation, then we will request one for you. You will be responsible for the charge associated with this evaluation.***

PHOTOCOPY STATEMENT

Copies of documents submitted are exact photocopies of unaltered original documents and I understand that I may be required to submit original documents to an immigration or consular official at a later date.

Click or tap here to enter text.

Signature:_____

Name: Click or tap here to enter text.

Date: Click or tap here to enter text.

NOTICE TO FOREIGN NATIONAL

1. It is important for you to review and understand the H-1B responsibilities as outlined in this H-1B packet. US. immigration regulations are very complicated. Your full understanding of the H-1B responsibilities as well as additional information below is necessary so that you can avoid problems and pitfalls in the future.

2. By applying for an H-1B visa, you are making representation to the U.S. government that you are seeking to enter the U.S. to work for Employer pursuant to the terms and conditions of the approved petition. Therefore it is absolutely imperative for you to fully understand the terms and conditions of your employment arrangement before submitting your nonimmigrant visa application.

3. If you had been arrested anywhere in the world and/or ever had problem with US immigration (such as deportation, overstaying, etc.), you must consult with an experienced immigration attorney immediately, as this may affect your eligibility to obtain a visa.

4. You must leave the U.S. on or before the expiration of I-94, unless Employer has filed an extension petition before the expiration of your I-94. If your I-94 has expired and no extension petition or change of status application has been filed, you would begin to accrue unlawful presence. If you accrue 180 days of unlawful presence and then depart from the U.S. thereafter, you will become inadmissible for 3 years. If you accrue 1 year of unlawful presence and then depart from the U.S., there will be a 10 year bar. **ATTENTION: IT IS YOUR OWN RESPONSIBILITY TO KEEP TRACK AND MAINTAIN A VALID I-94 AT ALL TIME. IF YOUR I-94 WILL EXPIRE IN 7 MONTHS, YOU MUST NOTIFY YOUR EMPLOYER TO GET YOUR H-1B STATUS EXTENDED. YOUR FAILURE TO FOLLOW UP YOUR OWN STATUS WILL RENDER YOU OUT OF STATUS.**

5. Your immediate family members (spouse and unmarried minor children) may also be eligible to come to the U.S. under H-4 visa. As H-4 visa holders, your family members can live, reside and go to school in the U.S. so long as you maintain your H status. H-4 visa status, however, does not allow your family members to work in the U.S (certain exemption applies). If you fail to comply with the terms and conditions of your H visa, you will be deemed out of status and so will your family. Keep in mind that your family's legal stay in the U.S., like yours, is controlled by the I-94 that they will receive from the DHS. Their I-94s may not necessarily have the same expiration date as your I-94. Consequently, it is absolutely important for you to monitor the validity of your family's I-94 at all time so that they will not be out of status. Do not automatically assume that your family's I-94 will have the same expiration date as yours and then you forget to extend their H-4 status.

6. If your employer is an H-1B cap exempted organization (e.g. institution of higher education, or affiliated thereof, governmental research organization, or nonprofit research organization), then your H-1B visa petition would most likely be granted as an H-1B exempted petition. When you are under an H-1B cap exempted status, you may only transfer your H-1B to another H-1B exempted organization. Any H-1B transfer to a non H-1B cap exempted organization will be subject to H-1B cap limitation.

I certify that I fully understand the H-1B responsibilities as explained herein and in pages 1 to 26 of this H-1B packet. I hereby declare that I will fully comply with the terms and conditions as required by law.

Click or tap here to enter text.
Signature:_____

Name: Click or tap here to enter text.

Date: Click or tap here to enter text.