

## Overview: H-1B Temporary Visa and Permanent Residence (Green Card) Sponsorship

### ***Want someone to work for Baylor who will need a visa for work authorization?***

The typical work authorization for non-student foreign nationals working at Baylor is an H-1B. The below information is designed to assist departments/supervisors and international employees. Please see the disclaimer at the bottom of this document for additional information.

### ***What is an H-1B visa?***

The H-1B work visa is issued to foreign nationals who are sponsored by a U.S. employer to work in the United States on a *temporary basis* working in a *specialty occupation*. Specialty occupations are defined as jobs that require “theoretical and practical application of a body of highly specialized knowledge” – i.e., positions that require candidates who have at minimum a Bachelor’s degree in a specific field of study. An H-1B petition filed with U.S. Citizenship and Immigration Services (USCIS) is only part of the overall process of legally obtaining entrance to/maintaining presence in the United States and requires lengthy work and processing times by both Baylor and various governmental organizations.

Once approved, an H-1B visa is valid for three years following the start date. This can be extended for an additional three years, allowing an individual to maintain H-1B status for up to six consecutive years. Generally, a foreign nonimmigrant may not spend more than six years in the United States, but may reapply for H-1B status after leaving the US for a period of one year or greater.

### ***What should the hiring Department / Supervisor and prospective employee know?***

The hiring Department / Supervisor will want to consider visa issues as early in the process as possible while being cautious not to engage in discrimination based on national origin. Please carefully read the discussion below on non-discrimination.

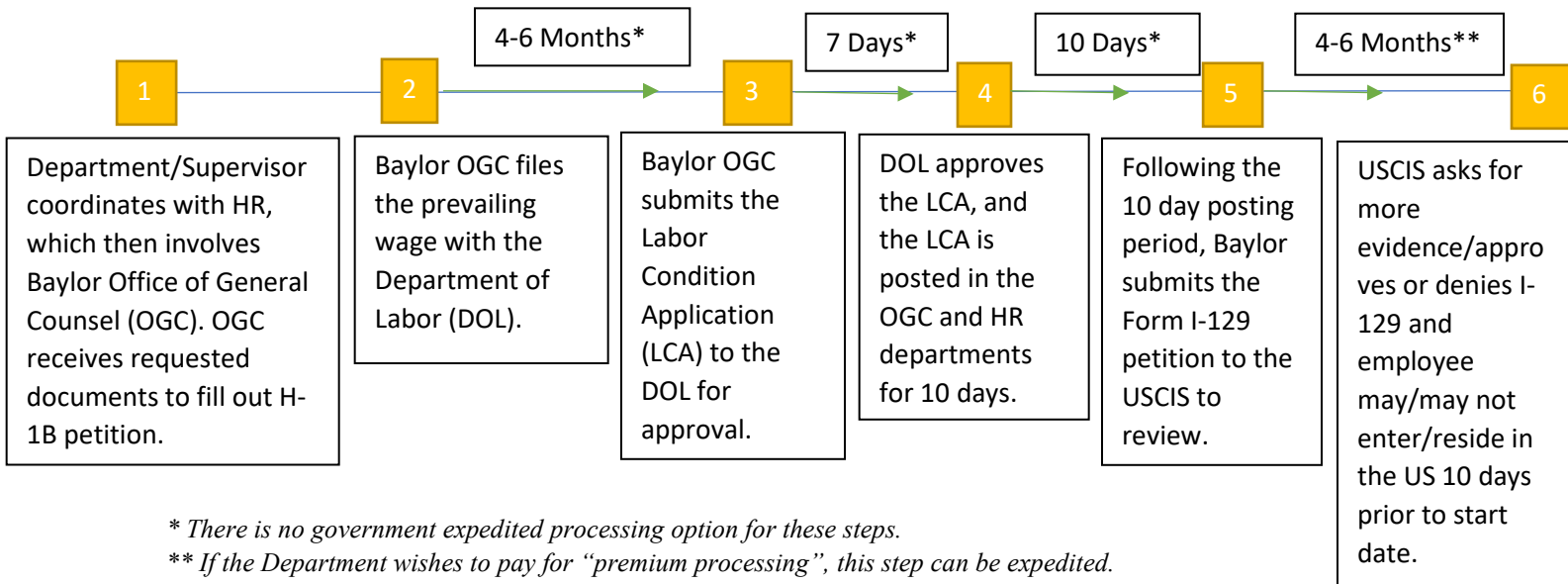
An H-1B application involves multiple Baylor and government departments, and can take several months to complete. As such, it is important that the Department / Supervisor who wants to employ a foreign national, and the person who wants to work for Baylor under an H-1B visa **begin the process 8 months to a year prior to their anticipated start date by contacting your Human Resources. The contact for Faculty hires is through the Human Resource Consultant (HRC). The contact for staff hires is through the HR Talent Advisor (recruiter) staff process. If you are working to hire a person for an external grant-funded position, be sure to let the HR Talent Advisor know that fact.**

### ***Who should you notify and when?***

Because of the lead time involved in obtaining or transferring a visa, the Department/Supervisor should reach out to their HRC (faculty) HR Talent Advisor (staff) as early as possible. Depending upon the type of visa involved, HR will contact the Center for Global Engagement (e.g., J-1 or F-1/OPT) or the Office of General Counsel (“OGC”) for H-1B visas and Green Cards.

### ***Who should the H-1B applicant notify?***

The H-1B applicant has the responsibility to sufficiently notify Baylor of any extensions or changes of immigration status. Part of the processing time can be expedited by paying for “premium processing,” which provides adjudication of Form I-129 within 15 business days of filing (i.e., approval, denial, or request for more evidence), for an additional \$2,500.00 to the hiring Department.



### **Who is eligible for one?**

A foreign national with an accredited bachelor's or higher degree (in a field of study directly related to the occupation) seeking temporary, specialized employment at Baylor may be eligible for an H-1B visa. The USCIS gives approval preference to individuals with STEM degrees, and Baylor's employment needs are subject to change on an as-need basis. H-1B status is employer specific (in some situations, transfers may be possible as discussed below), and thus someone working for another university who wants to work for Baylor must generally reapply for a new H-1B visa to work at Baylor. The specialization must match the education – for example, Baylor cannot hire a graduate with a Physics degree to work in H-1B status as an English teacher. All international degrees must be translated into English, be certified as equivalent to a U.S. degree, and be for the specialty occupation. If a H-1B visa holder's role or working conditions materially change while working pursuant to an H-1B visa, the visa holder is required to notify Baylor, and the Department/Supervisor lets Baylor HR know because Baylor is required to file an H-1B amendment petition with USCIS.

### **What should a department know about the importance of the job description, salary, and other terms and conditions of employment for an H1B employee?**

When working with HR, departments must carefully consider the material aspects of the position so that the original application accurately reflects the intent of the department. The H-1B work authorization is specific to the Labor Condition Application (LCA) and covers only the position for which the LCA and petition were filed.

Baylor must report any "material" change to an H1B employee's terms and conditions of employment prior to the change taking effect. Some of the most common proposed changes are appointment to a new position with a new title, moving to or adding a new worksite (e.g., any remote work), changes to duties (e.g., adding teaching when someone was approved as a researcher).

While material changes are possible, they may only occur after a new LCA is obtained from the Department of Labor (which includes a new Prevailing Wage analysis based on the new duties) and the amended petition is submitted to USCIS. Cost to the Department are again applied.

### **Can H-1B eligibility be transferred between U.S. employers?**

Individuals may transfer between existing U.S. employers with their H-1B status in some situations. For a current H-1B visa holder to change employers, the *new* employer is required to submit an H-1B visa transfer petition with the USCIS. Once the H-1B visa transfer petition has been submitted to the USCIS and the new employer has received an I-797C Notice of Action receipt from the USCIS, the H-1B visa holder has the option to begin working with the new employer.

However, this does not mean that the visa has been approved—the USCIS still needs to approve the H-1B visa transfer petition. Because of this, if an H-1B visa working individual has transferred to a new employer *prior to the transfer petition being accepted by the USCIS*, the individual will be required to cease working with the new employer if the petition to transfer the H-1B visa is denied.

Because of the possibility that the visa transfer petition could be denied, individuals may also wait until *after* they have received approval from the USCIS to transfer their H-1B visa to begin working. Additionally, if an individual is looking to transfer their H-1B visa *from* Baylor to another employer, it may open up the individual to be subject to the traditional H-1B “cap.” This is because higher education employers are not traditionally subject to the federally mandated H-1B visa cap, which only allows a certain number of H-1B approvals to be issued for employers whose companies operate outside the cap-exempt fields (i.e. outside of higher education).

***When may an applicant enter the U.S. under an H-1B?***

When entering in H-1B status for the first time, the employee may enter the U.S. no earlier than 10 days prior to the start date indicated on Form I-797. This 10-day period is for relocation purposes and no work is permitted during this time.

***May a person enter into the U.S. under a different visa such as a J-1/B-1/B-2 and then apply for an H-1B?***

All individuals entering under a visa must have intent corresponding to the particular visa. Baylor will not process an H-1B to transition someone from a J-1 or other visa to H-1B until at least 90 days after entry under the J-1. Change of reasons/status within 90 days of entering the U.S. under a visa can result in being flagged/investigated for visa fraud.

***What if an H-1B applicant is already in the U.S. under another visa such as a J-1/B-1/B-2 and wants to leave during pendency of the H-1B application?***

H-1B applicants should generally not leave the U.S. during the pendency of the H-1B processing if they want to return on a non-H-1B visa such as a J-1 or B-1. When a person enters under a visa status, they must have the appropriate intent associated with that visa. H-1B applicants should contact their HRC far in advance of any proposed travel outside of the U.S.

***What is the cost and who pays for them?***

For each H-1B petition, Baylor is required to pay the following government fees: \$460 fee for Form I-129 and \$500 fraud prevention/detection fee. If premium processing is requested, the additional \$2,500 fee is paid to USCIS. Premium processing is also available for H-1B visa transfer petitions, and is advised if the individual has ceased employment with an H-1B employer prior to making the transfer to avoid losing the opportunity to work under an H-1B visa. The hiring department pays these costs.

***May someone work before the H-1B, outside the U.S., or automatically upon receipt of H-1B?***

It is unlawful for Baylor to accept work from a person who is not authorized to work in the U.S. Additionally, Baylor employees may not permit individuals to engage in volunteer work without approval of Baylor HR. Also, no individuals may work outside the U.S. without obtaining University Vice President-level approval in accordance with, and otherwise complying with, the process in Baylor’s

Alternative Work Location policy, BU-PP 045. Finally, once an individual is approved for H-1B work at Baylor, that individual may not begin working without additional work authorization from Baylor HR.

***What about ‘visa stamping’?***

Employees and family members need to have a valid H-1B/H-4 visa stamp in their passport issued by a U.S. embassy or consulate abroad. Visa stamps cannot be obtained or renewed inside the U.S. If the applicant obtains the H-1B while already inside the U.S., the employee may remain without the stamp. If the employee leaves the U.S., for example for a vacation during the summer, the employee is responsible for obtaining the stamp while abroad.

***What should a department and visa holder consider after having the H-1B and starting work?***

Maintaining status is the responsibility of the employee. By signing their immigration documents, employees indicate that they agree to comply with the terms and conditions of their admission and any extensions of stay. An employee must pay careful attention to the dates associated with expiration of stay and work with HR and their department well in advance of any needed extension or requirement to leave the U.S. Departments must notify HR as soon as possible of the following conditions:

- Termination of an employee;
- Discipline of an employee;
- Desire to extend the H-1B;
- Desire to obtain a Green Card;
- Any ‘material’ change to employment such as a new title, moving to or adding a new worksite (e.g., any remote work), changes to duties (e.g., adding teaching when someone was approved only as a researcher or adding summer teaching when someone was only approved for 10 months).

***What happens after H-1B approval for someone who wants permanent residence (What about a Green Card)?***

If a foreign national employee wishes to remain in the United States permanently (i.e., beyond the six-year H-1B limit), they will need to go through an additional process called the permanent residence or “Green Card” sponsorship process. This process can run while the foreign national is sponsored for H-1B status. If the employee wishes to stay in the U.S. permanently, this process should be started around 3-4 years into the employee’s total six-year allowance in H-1B status.

There are multiple ways to be sponsored for permanent residence in the United States:

- (1) Family-based sponsorship by a U.S. Citizen relative, Lawful Permanent Resident relative, or a spouse who is being sponsored by their own employer for the permanent residence process (***not sponsored by Baylor***); &
- (2) Employment-based sponsorship by a U.S. employer (***sponsored by Baylor & outlined below***). Here, Baylor must show the DOL that Baylor was unsuccessful in recruiting a qualified U.S. worker for the same professional, permanent, full time position.

The Green Card process is not one Baylor conducts for an employee. However, Baylor Office of General Counsel can refer an employee to an outside legal counsel. Baylor can also work with an outside legal counsel of the employee’s own selection. Outside counsel may not process an employer sponsored Green Card for a Baylor employee without the University’s approval. This will involve the

Department/Supervisor working with Baylor Office of General Counsel to provide the offer letter, recruitment, search committee report and other possible documentation.

**Other than the Labor Certification portion of the Green Card under sponsorship of Baylor as an employee, the fees are paid for directly by the employee.**

<b>Step and Cost</b>	<b>What</b>	<b>Which Agency</b>	<b>How Long</b>
<i>Step 1:</i> \$3,000 (paid by Baylor/hiring Department)	PERM Labor Certification (labor market test and certification from agency)	U.S. Department of Labor	12-24 months
<i>Step 2:</i> \$700 government fee + law firm legal fee (not paid by Baylor)	I-140, Immigrant Visa Petition	U.S. Citizenship and Immigration Service	1 year
<b><i>*Ghost Step: Waiting period typical for Chinese- and Indian-born nationals</i></b>	Wait for an immigrant visa number to be available	Watch the U.S. Department of State's monthly Visa Bulletin	No wait? 5 years? 8 years? Longer?
<i>Step 3:</i> \$1,225 government fee per family member + law firm legal fee (not paid by Baylor)	I-485, Application to Adjust Status	U.S. Citizenship and Immigration Service	1-2 years

***For those with pending Green Card processes and in a waiting period, are they able to continue working under their H-1B or are they required to leave for a year after the six-year period of their H-1B visa?***

H-1B status may be extended if the employee is the beneficiary of an approved I-140 petition, but their priority date is not yet current.

***Are there different processes based on what country a person is coming from?***

The North American Free Trade Agreement (NAFTA) created special economic and trade relationships for the United States, Canada, and Mexico. The nonimmigrant NAFTA Professional (TN) visa allows citizens of Canada and Mexico, as NAFTA professionals, to work in the United States in prearranged business activities for U.S. or foreign employers. TN workers can stay in the U.S. for up to three years at a time. However, there is no upper limit on the total amount of time a Mexican or Canadian citizen can spend in the U.S. in TN status. You just need to intend at some point in the future to return to your home country. The prospective/actual employee is responsible for obtaining a TN visa and sharing that information with Baylor. Baylor will provide the letter for employment showing that the foreign national has a job offer or employment. Baylor HR can assist the Department/Supervisor with this letter.

Canadian/Mexican citizens are also able to apply for a H-B visa as an alternate to the TN. Canadian citizens approved for H-1B work are initially allowed 3 years, whereas Mexican citizens are initially approved for 1 year. Canadian and Mexican citizens seeking H-1B visa work with a U.S. employer are restricted to specific occupational categories, such as engineers.

Additionally, applicants who are citizens of Chile, Singapore, or Australia are valid for 1-2 years upon approval. Citizens of these countries are restricted to the similar professions that H-1B visas are traditionally restricted to, unlike the tighter restrictions for Canadian and Mexican citizens.

***How does someone ask about authorization to work and non-discrimination?***

Searching, hiring, and employment processes must not discriminate against a person based on their national origin, which includes a prohibition against making, hiring, or other employment decisions based upon an individual's actual or perceived immigration status. The law prohibits employers from hiring only U.S. citizens or lawful permanent residents unless required to do so by law, regulation, or government contract. The law also prohibits Baylor from employing someone in the U.S. without work authorization. Employment offers are contingent on work authorization, and HR is the office that confirms an individual's right to work in the U.S. upon employment.

Search committees and others involved in the hiring process should coordinate with Baylor HR to learn about work authorization for a particular individual. Baylor HR asks the questions in the right time and manner. If a prospective employee raises the issue of obtaining an employer sponsored visa, they should be referred to Baylor HR and this document may be provided. No Baylor employee may make promises of a visa and employment contracts are continued on the right to work legally in the U.S.

***What if a prospective employee has a family?***

Family visa processing is the responsibility of the prospective or actual employee. Baylor does not participate in this process. Spouses and unmarried children under the age of 21 can be admitted into the U.S. under the H-4 visa. Each family member must obtain their own H-4 visa. Application for the H-4 visa occurs at the U.S. consulate in the H-1B worker's home country, and occurs *after* the USCIS has approved the initial H-1B visa petition for the individual seeking H-1B employment with a U.S. employer. If the family members are already in the U.S., they obtain H-4 status by filing an I-539 application with the USCIS. Approval of the I-539 form will come after the H-1B visa is approved.

***Disclaimer***

The information on this document is not legal advice and is subject to change based upon changing laws, regulations, and changes to Baylor policies and processes. Legal information is not the same as legal advice, which is the application of law to an individual's specific circumstances. The information on this document is not a substitute for, and does not replace the advice or representation of, a licensed attorney. Please contact the Baylor University Office of General Counsel for legal advice. The use of this document does not create a contract between Baylor and any individual, nor does it create an attorney-client relationship between Baylor legal counsel and any user.

***More information***

If you have questions about H-1B, Green Card, F-1 (student visa), OPT (optional practical training), or J-1 (exchange visitor) visa, please contact Baylor HR.