

## H work visas

While many come to the United States to be reunified with family, many more come simply to work. Those coming simply to work just want a social security card or work permit. Only those people who are already in the process of applying for Lawful Permanent Residency Status or asylum are eligible for an employment authorization document (EAD) or “work permit” as it is commonly referred to. The employment authorization document is valid in one year increments and allows the holder to work for any employer. For those still wanting to work but have no access to an EAD, there is the most commonly sought work visa, the H1B1 **non-immigrant** visa. The H1B1 affords the holder the opportunity to remain in the United States for up to six (6) years. At the end of the six years the visa holder must leave the United States for a period of at least one year before returning to complete another H1B1 for up to six more years. There are a limited number of these visas available and they are subdivided into categories based on education level. Because the number of visas is limited, once the visas are exhausted, the applicants must wait for the next year fiscal cycle before submitting an application for this type of visa.

Unlike the EAD which allows the holder to work for any employer of his or her choosing, the H1B1 worker must work for the specific employer that sponsored him or her. The H1B1 worker is a contract employee. Contracts can be for up to 3 years initially and then the employer can request renewal for up to an additional three (3) years if desired. Employers are required to provide for return transportation for the employee back to his or her country of origin once the contract period ends. Immediate family members can accompany the H1B1 worker, but these dependents are not permitted to work. Thus, the H1B1 worker will be the sole supporter of the family unless the other spouse can obtain his or her separate H1B1. The dependent children (under 21) can attend school while the H1B1 worker is working for the employer.

If the employment relationship terminates before the contract period is up, then the visa also expires as the visa is based solely on the employment relationship. An H1B1 can change employers but must re-apply or begin the application process over from the beginning with the new employer and can only remain in the United States for as long as they are able to in the six year window unless s/he returns to his or her country of origin for at least one year before returning. The one year absence from the United States renews the six year cycle. An individual can have more than one H1B1 at the same time, but must complete separate applications for both employers. If an individual is physically in the United States on a different visa and changes to an H1B1 visa while in the United States and leaves the country, then the individual must re-apply by re-submitting all application materials for the H1B1 to the US Embassy abroad before re-entering the US after the trip abroad.

In order to qualify for an H1B1 visa, an individual must have at least a bachelor’s degree or its equivalent or higher. Thus, this is a visa for professionals. Documentation such as diplomas, certificates, or transcripts for completion of degree programs is required to show achievements in the educational discipline. At times, a credential evaluation is necessary if foreign course work is not easily understood or transferable. A certified evaluation service or credentialing agency is able to provide such translation and evaluation of foreign diplomas and transcripts. In addition to the transcripts or diplomas, letters of reference should be provided as well as a thorough curriculum vitae or resume.

The employer must demonstrate that the prospective employee is necessary, an essential worker, or would be indispensable to the company. The employer must provide documentation to explain the business purpose or mission of the company and function of the employee, his/her duties or job description. Generally, the employer must post notices that it is seeking an H1B1 foreign worker and it should not have more H1B1 workers than US authorized workers in its employ. The wages or salary and/or benefits package of the prospective worker must be comparable to what an authorized US worker would receive. Appropriate wages are determined by a prevailing wage occupational or industry database. The employer must demonstrate its ability to compensate the employee by providing some documentation about the company financial profile to demonstrate that the employee would not likely take additional unauthorized employment.

The filing fees can be substantial depending on company size and are usually a disincentive for pursuing this type of visa. Only truly serious employers are willing to make the investment as considerable costs and turnover rates affect a company's willingness to pursue this option. Once the visa is granted an H1B1 worker can work for the duration of the contract period. Thus, many individuals who want to obtain a work visa may not be eligible because of education level or employer willingness. Further, in order to obtain an H1B1, the worker must currently be in lawful status in another visa category if intending to apply for an H1B1.

Unskilled workers do have an option, however, and can obtain a work visa as well. This type of visa is in the H2 category and is reserved for temporary or seasonal workers in both agriculture (H2A) and non-agricultural sectors (H2B). The H2 visas are extremely limited as the law authorizing these visas permits less than 10,000 visas nationwide per fiscal cycle. Employers hiring these types of individuals are required to provide roughly the same documentation regarding "necessity" as are H1B1 employers of professionals, but the employers are required to show that the need is "temporary": one time or seasonal based on industry demands. These visas tend to last up to one year and extensions are given rarely, and only in well documented extraordinary circumstances.

Thus, obtaining permission to work in the United States is not an easy feat. Unless an individual is already pursuing adjustment of status through family or the asylum process, s/he will not likely obtain an employment authorization document allowing him or her to get a social security card to work for any employer. Work visas are extremely competitive and require both the employer and the prospective employee to invest time and money into the process. Fortunately for some, educational training and skills, and the profession into which they fall afford them opportunities they would not otherwise have.