

H-1B BASICS

International Scholars Operations (ISO)

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AGENDA

- What is an H-1B?
- H-1B Process
- Prevailing Wage Determinations
- Q&A Break
- Labor Condition Applications
- Filing with USCIS
- Changes to H-1B Employment
- Proposed Changes
- Q&A Break

H-1B TEMPORARY WORKER

- Worker coming to U.S. to work in a “specialty occupation”
- Position must require at least a bachelor’s degree in a relevant field
- More compatible with application for permanent residence than J-1, F-1, TN, or E-3
- Filing fees of up to \$3,460

H-1BS ARE HIGHLY REGULATED

- Employer-, site-, and position-specific
- Require wage protections and notice to workers
- Changes must be reported to Department of Labor (DOL) and U.S. Citizenship and Immigration Services (USCIS)

UW SPONSORSHIP OF H-1BS

Full-time appointments in the following titles/ranks:

- Professorial including acting; teaching, research, and clinical tracks
- Lecturers Full-Time Temporary
- If in the U.S. and exhausted another status (usually F-1 OPT or J-1):
 - Postdoctoral Scholars
 - Acting Instructors
- Medical Residents and Fellows (by exception only)
- Staff (with eligibility screen from UWHR)

H-1B PROCESS

VISA REQUEST PROCESS (GENERAL)

Pre-Request

- Unit gathers information on the **H Visa Intake Form**
- Submits **H Visa Request Form** online

Visa Request

- OAP reviews **H Visa Request Form** and contacts unit with questions
- OAP sends a PDF of the **approved H Visa Request**

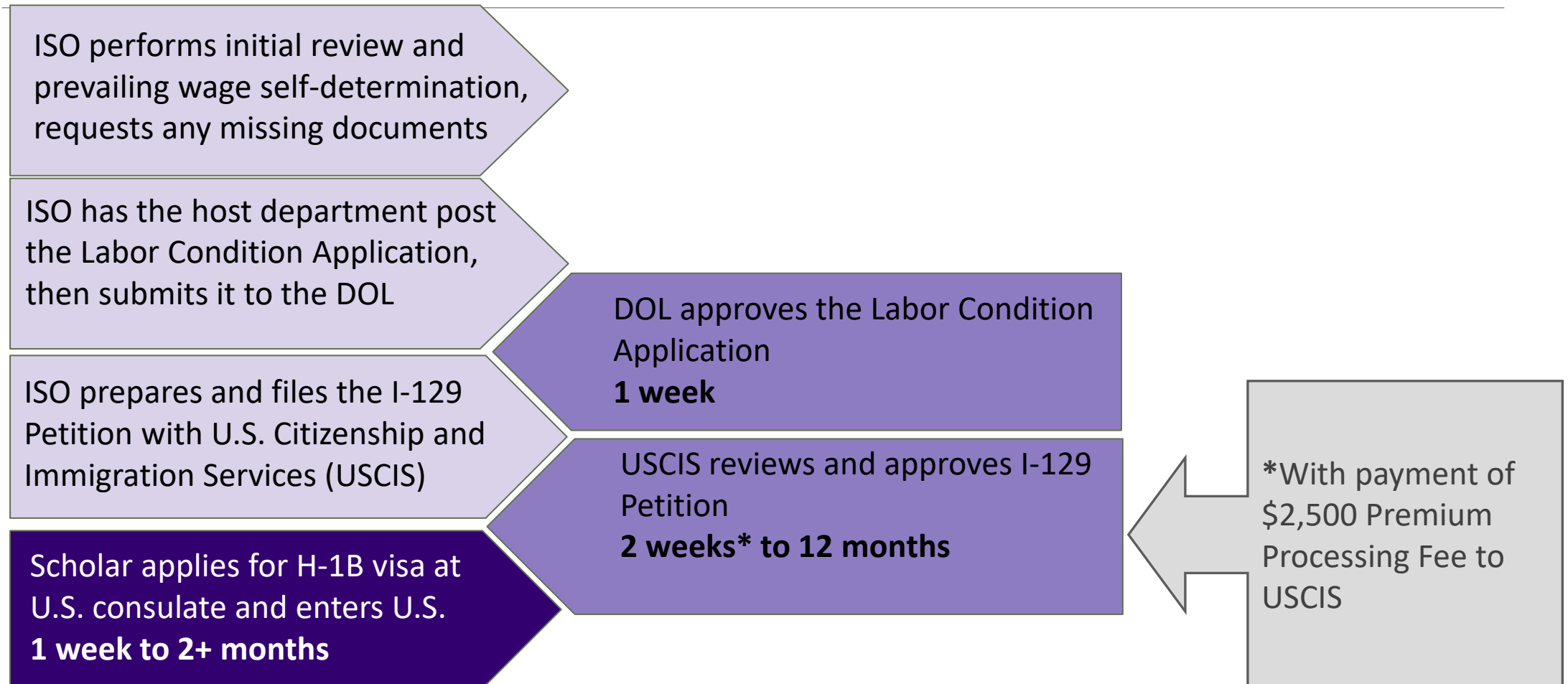
*Review may include gathering documents to confirm visa or appointment eligibility.

*Contact ISO regarding any changes after conditional approval is issued

Post-Request

- Unit gathers **supporting documentation**
- Unit gets signatures on **approved H Visa Request**
- Unit returns **approved H Visa Request**, with supporting documentation, to ISO for further processing
- ISO initiates next steps with various government agencies

ADJUDICATION PROCESS



PROCESSING TIMES

- Federal agency processing times change regularly
- ISO tries to anticipate times throughout the process
- We currently suggest submitting the visa request **at least**
 - **6 months** ahead for **new H-1Bs without USCIS premium processing**
 - **3 months** ahead for **amendments, extensions, and changes of employer**, and for **new H-1Bs with USCIS premium processing**
- These suggested times are subject to change
- **Remember:** ISO can process LCA and I-129 petition only after the unit provides supporting documentation, so units should provide the packet as soon as possible after conditional approval

PREVAILING WAGE DETERMINATIONS

WHAT IS THE PREVAILING WAGE?

Average wage paid to similarly employed workers in a specific occupation in the geographic area of intended employment.

- For CBA positions, prevailing wage is set by CBA.
- For all non-CBA positions, ISO will do a self-determination to move the H-1B forward.
- For some non-CBA positions, ISO will request a determination from the Dept. of Labor to support
 - Permanent residence sponsorship, or
 - UW's prevailing wage compliance.

PREVAILING WAGE SELF-DETERMINATION

ISO will use the [Prevailing Wage Intake Form](#) (and job ad, if competitively recruited) to choose an occupational category ("SOC") and wage level (1-4) based on job duties and requirements, and assign a prevailing wage based on the Department of Labor's local wage data.

FOR EXAMPLE:

An acting instructor position performing research in the Department of Biochemistry, with a requirement for 5 years of postdoctoral experience:

Category: 19-1021 Biochemists and Biophysicists

Wage Level: 2

Wage: \$55,515/year

FOR EXAMPLE:

An acting instructor position performing teaching and research in the Department of Biochemistry, with a requirement for 5 years of postdoctoral experience:

Category: 25-1042 Biological Science Teachers,
Postsecondary

Wage Level: 2

Wage: \$79,283/year

PREVAILING WAGE PROBLEMS

- Sometimes ISO's prevailing wage self-determination will result in a wage higher than that offered to the H-1B employee
- Sometimes DOL will issue a prevailing wage determination higher than that listed on the H-1B petition

We'll talk about how to deal with these problems in our Advanced H-1B training next month!

PREVAILING WAGE TIPS

When you fill out the **Prevailing Wage Intake Form**:

- Describe the job **in detail**, including whether or not it is “**entry-level**” or involves **training or direct supervision**
- **Provide all requested information**, especially regarding teaching/instructional duties.
- List the **absolute minimum** required experience, training, and education for the position – NOT the beneficiary’s qualifications
- **Confirm unusually high experience requirements**
- **Match requirements** to those listed in the ad

ISO will contact you with any questions or concerns we have.

Q & A BREAK 1

Q: I heard there was a recent change regarding prevailing wages; is that true?

A: Yes. Until recently, UW's practice was to get a prevailing wage determination (PWD) for all H-1Bs (with a few exceptions) and we would not file the petition with USCIS until we had the PWD from DOL. Our new practice is to do self-determinations and move forward with the H-1B, and we get PWD's from DOL only when needed for permanent residence sponsorship or for UW's prevailing wage compliance.

LABOR CONDITION APPLICATIONS

WHAT IS THE LABOR CONDITION APPLICATION?

The Labor Condition Application (LCA) is meant to protect the rights and working conditions of U.S. workers.

By submitting the LCA, we do the following:

- Lock in dates, salary minimum, and worksites for the H-1B employee.
- Make promises regarding notice and working conditions for the H-1B employee and other workers.

WHAT PROMISES?

On the LCA, the employer must promise that:

- Employer will pay H-1B employee at least the “required wage”
- Employer has given notice to U.S. workers
- No strike, lockout, or work stoppage is taking place
- Employment of H-1B employee will not adversely affect working conditions of U.S. workers

Some of these promises require additional documentation, which ISO keeps in a “public access file” as required by law.

WHAT IS THE REQUIRED WAGE?

The required wage is **the higher** of:

- Prevailing wage

Average wage paid to similarly employed workers in a specific occupation in the geographic area of intended employment.

- Actual wage

Rate paid by employer to “all individuals with experience and qualifications similar to the H-1B nonimmigrant's experience and qualifications for the specific employment in question at the place of employment.”

HOW IS THE ACTUAL WAGE DETERMINED?

Unit includes wages paid to similarly-situated workers in the appointing unit on the Actual Wage Memorandum in the H-1B packet.

H-1B employee must not be paid less than all other similarly-situated workers.

WHO IS “SIMILARLY-SITUATED”?

- Generally, workers in the same academic title in the same appointing unit
- If your unit has many employees in the same appointment title, you can further differentiate by
 - education
 - experience
 - skills/specialized knowledge
 - job responsibilities and duties
 - publications
 - license/certification
 - other “legitimate business factors”

FOR EXAMPLE:

Which employees would you include on the Actual Wage Memo for Alpha?

Name	Title	Unit	Degree field	Years of experience	Salary
Alpha	Postdoctoral Scholar	Microbiology, Zeta Lab	Biochemistry	2	\$67,000

1	Postdoctoral Scholar	Microbiology, Theta Lab	Microbiology	3	\$68,000
2	Acting Instructor	Microbiology	Pharmacy	4	\$57,000
3	Postdoctoral Scholar	Microbiology, Zeta Lab	Biochemistry	1	\$66,000
4	Acting Assistant Professor	Microbiology	Microbiology	2	\$85,000

THERE ARE MULTIPLE RIGHT ANSWERS

- You can include both postdoctoral scholars (1 and 3) on the Actual Wage Memo.
- You could include only the postdoctoral scholar with a degree in the same area (3).
- Since both postdoctoral scholars are at different experience levels than the H-1B employee, you could choose to include neither.
- But you **can't include** people in other titles (2 and 4) in the same unit.

POSTING NOTICE

- For CBA cases, ISO sends notice directly to the union
- For non-CBA cases, notice can be posted
 - Physically:
 - Posted at **two locations** in each worksite for **ten business days**
 - Electronically:
 - Emailed to faculty or departmental listserv, or
 - Posted on intranet (departmental internal website) for **ten business days**
- Notice must be posted before ISO can submit LCA

SUBMITTING THE LCA

DOL has seven business days to approve LCA once submitted.

ISO advisors may reach out after submitting LCA for any remaining documentation.

FILING WITH USCIS

WHAT IS THE PETITION TO USCIS?

USCIS is the agency that grants most immigration benefits in the U.S.

The I-129 petition filed with USCIS is our request to employ someone in H-1B status.

WHAT DO WE FILE WITH USCIS?

- Filing fee check(s) or Form(s) G-1450 for credit card payment
- USCIS Form I-129 Petition for a Nonimmigrant Worker
- Evidence that position is a “specialty occupation”
- Evidence of employee’s immigration status and history
- Evidence of employee’s qualifications

ISO will provide unit with a copy or scan of everything we file with USCIS.

USCIS PROCESSING TIMES

- Current processing times for all H-1 B petitions:
2.5-3 months
- Historical processing times:
2 weeks to 10 months

Processing may also take longer if USCIS issues a "Request for Evidence"

PREMIUM PROCESSING

- \$2,500 fee paid to Department of Homeland Security
- Must be paid by unit
- USCIS will take action (approval, request for evidence, or denial) within 15 calendar days of receipt
- Does not expedite action by other agencies (DOL, Department of State) or by ISO
- Sometimes USCIS suspends Premium Processing during peak periods

APPROVAL

- USCIS will mail approval notice with dates of H-1B status to ISO
- ISO will forward approval notice to unit by campus mail unless you request documents be held for pickup
 - Unit can provide FedEx labels to have documents sent directly to employee
- Unit gives the approval notice to the employee
 - They will need the original as proof of status and to reenter the U.S. after international travel

CHANGES TO H-1B EMPLOYMENT

BEYOND INITIAL H VISA REQUESTS

You must submit a new H Visa Request, with supporting documentation, for any of the following:

- **Extend** the person's H-1B status
- **Change** the person's appointment **title or worksite**
- **Move** an H-1B already at UW to your department
- **Transfer** an H-1B already in the U.S. to UW

Submit as early as you can, but at least **three months** in advance.

ENDING H-1B EMPLOYMENT

- H-1B employers must report any early termination or resignation to DOL and USCIS
- If an H-1B employee resigns or is terminated, contact ISO
- For any early termination, employing unit must offer to pay the “reasonable costs of repatriation” to the employee’s home country

PROPOSED CHANGES

PROPOSED RULE ON USCIS FEES

- Published in the Federal Register on 01/04/2023
- 60 day public comment period ended on 03/06/2023
- Proposed increase in I-129 filing fees (currently \$460):
 - H-1: \$780
 - E, TN, O: \$1,015
- Premium processing timeframe would change from 15 calendar days to 15 *business* days
- Final action is expected in March 2024

WHAT'S NEXT

- The [H-1B Advanced](#) workshop (12/18) will cover:
 - H-1B history and policy affecting UW sponsorship
 - H-4 dependents
 - Time limits on H-1B eligibility
 - Troubleshooting H-1B problems
 - More tips and tricks

If you have an area you'd like addressed, please let us know!

Q & A BREAK 2

- - Q: Our unit has never sponsored someone on a visa. We now have questions about visa sponsorship for staff, in particular Research Scientist/Engineers. We are concerned about funding – if they are on time-limited funding, what happens if funding runs out? For example, what if they are on a 3-year H-1B and funding runs out after 2 years?
 - A: If the employee is terminated before the end of the H-1B sponsorship, the unit must offer to pay the reasonable costs of repatriation. At a minimum, that means a plane ticket for the employee to go home. Please let ISO know of any early termination.

Q & A BREAK 2 CONT'D

- Q: At the pre-offer stage, how can we talk to applicants about visas?
- A: That is a nuanced question. Be careful about raising visa/status discussion to avoid the appearance of discrimination. Ask only basic employment eligibility questions, such as “Are you authorized to work in the U.S.?” Once you have a candidate you think you will offer to, reach out to ISO if you have questions.
- Q: Would providing an H intake form be considered a pre-offer?
- A: ISO recommends waiting to get that type of information until you are sure you are going to offer the job. If time is an issue, please reach out to ISO.

Q & A BREAK 2 CONT'D

- Q: How do we make sure that an Interfolio ad is compliant for visa purposes?
- A: ISO pre-reviews all Interfolio ads for positions that are eligible for permanent residence sponsorship. For H-1B's, we are not concerned with ads or recruitment.

RESOURCES

- [ISO Landing Page](#)
- [H-1B Landing Page](#)
- [How to Sponsor an H-1B Page](#)
- [OAP Visa Blog Posts](#)
- [H-1B Visa Request Form](#)
- [H-1B Required Documents](#)
- [H-1B Process Handout](#)

