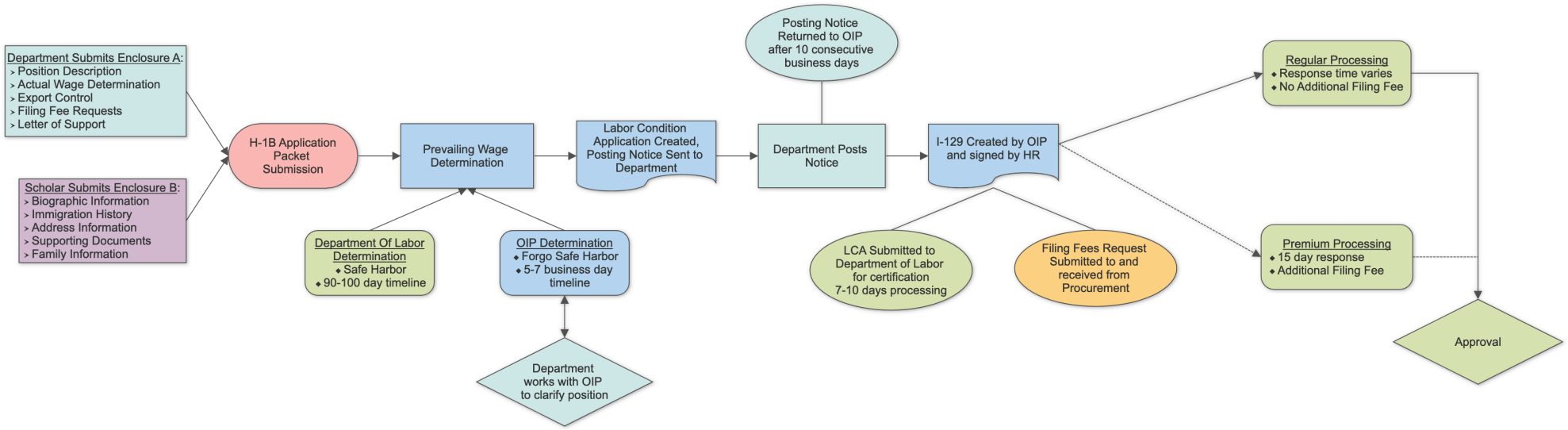
H-1B Process *(simplified overview)*



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H-1 B – Application

OVERVIEW OF H-1B

The H-1B category is for persons who are coming to the U.S. to be temporary workers in a specialty occupation. To be considered eligible for H-1B, the position must require at least a Bachelor's degree. Employment approval is granted through the U.S. Citizenship and Immigration Services and is job specific as well as employer and department specific. The H-1B status may be granted initially for up to a three-year period with a maximum total stay of six years. Workers in this category can fill permanent positions, but must leave the country at the end of their authorized period of stay. A person in H-1B status is considered to have dual-intent with regards to immigration. This means that while in H-1B status, workers may file for a change to another immigration category. H-1B is often the category used while in the process of applying for U.S. permanent residency.

TIMING OF FILING – PLAN MORE THAN 6 MONTHS IN ADVANCE

At the earliest, the Office of International Programs may submit an H-1B petition to US Citizenship and Immigration Services 6 months before the intended beginning effective date of the H-1B. The H-1B application process is very long and requires much documentation from both the department and applicant. It is recommended that departments begin any new H-1B application, extension, or amendment as close to 6 months in advance of the intended start date as possible.

If timing is a critical issue such as with a new professor hired in the summer months who must begin work at the beginning of the fall semester, departments have the option of filing for Premium Processing. Premium Processing guarantees a decision on an H-1B petition within 15 days of the receipt by US Citizenship and Immigration Services of the I-129, H-1B application. The cost of Premium Processing is $2500 in addition to the regular $460 application fee and the $500 anti-fraud fee for new H-1B applications.

HIRING AN INTERNATIONAL WHO IS OUTSIDE OF THE UNITED STATES

If the applicant is outside of the U.S. with no current visa status, the applicant must submit all documents requested in the Enclosure B section of this application to the Office of International Programs.

When the H-1B is approved, the US Citizenship and Immigration Services (formerly INS) will cable the approval to the consular office abroad where the visa will be obtained by the applicant. The original approval notice for the H-1B will be sent to the Office of International Programs.

Prior to the applicant's interview with the consular office, the hiring department will be asked to send the H-1B applicant some information which is kept in the Office of International Programs, including the original approval notice for the H-1B along with a copy of the entire H-1B application packet which was sent to USCIS.

Because this is new H-1B employment, both the filing fee of $460 and the anti-fraud fee of $500 are required of the department.

University of Mississippi

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HIRING AN INTERNATIONAL WHO IS IN J-STATUS (J-1 OR J-2)

If the H-1B applicant is currently in the U.S. in J-Visa status, it may be possible to petition for a change from J-Visa status to H-1B. There is one important note when concerning applicants who are in J-Visa status - many J-Visa programs require the individual to complete a two-year home residency requirement [212(e) Rule] in the J-Visa holder's home country. It is sometimes possible for the J-Visa holder to get a waiver of the two-year home residency requirement through the Department of State, but the waiver must be granted before the Office of International Programs can process the H-1B application.

More information about the waiver requirements and processes are on the U.S. Department of State website: http://travel.state.gov/visa/temp/info/info_1296.html . It is important to note that once a waiver of the 212(e) two-year home residency requirement has been approved, the J-Visa holder's DS-2019 cannot be transferred or extended at all.

Because this is new H-1B employment, both the filing fee of $460 and the anti-fraud fee of $500 are required of the department.

HIRING AN INTERNATIONAL WHO IS ON F-1 OPTIONAL PRACTICAL TRAINING (OPT)

If the H-1B applicant's current work authorization is based on F-1 Optional Practical Training and the proposed job is in the applicant's major field of study, then employment with the University of Mississippi may begin and continue until the OPT expires. The H application must be approved prior to the expiration of the OPT in order to avoid a lapse of work authorization.

Employment must stop if the H-1B has not been approved and the practical training period expires.

Because this is new H-1B employment, both the filing fee of $460 and the anti-fraud fee of $500 are required of the department.

HIRING AN INTERNATIONAL WHO IS CURRENTLY IN H-1B STATUS WITH ANOTHER EMPLOYER

If the H-1B applicant is currently in the U.S. in H-1B status with another employer, it is possible for the applicant to begin working for the University of Mississippi before the I-797, H-1B approval notice is received. According to the U.S. Immigration and Naturalization Act as amended by the American Competitiveness for the 21st Century Act of 2000, [AC21 § 105], [INA § 214 (a) (m)], non-immigrants currently in H-1B status with one employer (other than the University of Mississippi) can begin employment with a new employer as soon as the new employer files the I-129, H-1B petition for new H-1B employment. The new employer and H-1B applicant do not have to wait for the new petition to be approved in order to begin employment. The Office of International Programs will authorize employment to begin as soon as the I-129 receipt notice (the official notice of application receipt from USCIS) arrives.

Unlike an extension of H-1B, hiring an applicant who is currently in H-1B status with another employer is treated as NEW H-1B employment. Thus, both the filing fee of $460 and the anti-fraud fee of $500 are required of the department.

It is important to note that any time spent in H-1B status counts toward the 6-year limit for H-1B holders.

If the applicant is currently in H-1B status with another employer, they must also submit the H-1B Portability Attestation in the Enclosure B Section for the Applicant.

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H-1 B – Application

AMENDING H-1B STATUS FOR A CURRENT EMPLOYEE OF THE UNIVERSITY OF MISSISSIPPI

When there is a change in the duties or terms and conditions of employment of an H-1B worker, an amended I-129, H-1B application may be needed. According to I.N.S. field memorandum CO 214h-C, an amended H-1B application is necessary if the H-1B worker's job duties change significantly (e.g. from postdoctoral research to college teaching) or when there is a significant change in salary which would require the filing of a new LCA with the Department of Labor.

Minor changes in the conditions of employment do not require the filing of an amended H-1B petition. Though, minor changes should be noted in any future extension of H-1B status. Minor changes would include a change of job title with no or minimal changes in job duties or an unsubstantial salary increase.

Amended H-1B applications must be filed before the proposed change in status goes into effect. A change of duties or salary will not be approved until the Office of International Programs receives the I-129 receipt notice (the official notice of application receipt from USCIS).

An amended application for an H-1B worker currently employed by the University of Mississippi requires the department to pay the filing fee of $460 only. Otherwise, the application process for an H-1B amendment is exactly the same as it is for a new H-1B application.

EXTENDING H-1B STATUS FOR A CURRENT EMPLOYEE OF THE UNIVERSITY OF MISSISSIPPI

According to 8 C.F.R. § 274.12 (b) (20), if the H-1B applicant is currently in H-1B status with the University of Mississippi, it is possible for the applicant to continue working for the University of Mississippi for up to 240 days after the expiration of the current H-1B status as long as the H-1B extension was timely filed. Timely filing means that US Citizenship and Immigration Services must receive the I-129, H-1B application before the expiration of the current H-1B. The Office of International Programs will authorize employment to continue as soon as the I-129 receipt notice (the official notice of application receipt from USCIS) arrives before the expiration of the current H-1B.

An extension for an H-1B worker currently employed by the University of Mississippi requires the department to pay the filing fee of $460 only. Otherwise, the application process for an H-1B extension is exactly the same as it is for a new H-1B application.

If the H-1B extension is not filed before the expiration of the current H-1B status, employment must stop until the H-1B is approved and the I-797 approval notice is received by the Office of International Programs.

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University of Mississippi

H-1 B – Application

H-1B PROCESSING STEPS

THE DEPARTMENT:

• To begin the H-1 process, the department should complete **Enclosure A** section of this application.

• Departments must provide an offer of employment letter. *See sample in Enclosure A section*. The letter must include statement that the department will pay the return trip cost if the department terminates employment of the H-1B employee before the expiration of H-1B status.

• Departments must pay the standard H-1B filing fee of $460. Departments must pay an additional anti-fraud fee of $500 for *new* H-1B applications. Additionally, if Premium Processing is being sought for an expedited service, there is an additional filing fee of $2500. The fees can processed through UM Procurement Services by submitting a Request for Payment Form along with the filing fee memo to Procurement Services (both the form and memo are included in the Enclosure A section of this packet). The two filing fees need to be separate checks or money orders, and should be made out to "Department of Homeland Security," ***but the checks should be sent to The Office of International Programs***. International Programs must include the checks with the H-1B application.

• Departments must supply the Office of International Programs with either an orange departmental mail card for shipping the H-1B Petition to USCIS by Express Mail through the US Postal Service or provide International Programs with a FedEx Account Number for the overnight shipping of the package.

H-1B APPLICANT (INTERNATIONAL EMPLOYEE):

• The international applicant must complete the **Enclosure B** section of this application.

• An applicant who is currently in H-1B status with another employer must also submit the H-1B Portability Attestation in the Enclosure B Section for the Applicant.

• H-1B applicants must submit all requested supporting documents:

☐ Curriculum Vita/ Resume which includes current address, home country address, statement of work history, and list of publications

☐ Copy of highest university-level academic diploma, and transcripts/mark sheets.
- Diplomas and transcripts/mark sheets do not have to be originals
- Documents not in English must be translated by someone competent to do so (See attached translation certificate sample) Copies

☐ of 3 most recent pay stubs/ paycheck notifications if currently employed in the US

☐ Copy of Passport Identification Pages (Full-page photocopies ONLY. Do not cut the photocopy to the shape of the passport) **

☐ Copies of current/ most recent Visa Stamp **

☐ Copies of I-94

☐ Copies of all previous I-20's, DS-2019's, IAP-66's, and H-1B or H-4 I-797 Approval Notices**

☐ Copy of Employment Authorization Card (i.e. F-1 OPT Card or J-2 EAD Card) if currently working on Employment Authorization

☐ Proof of I-612 waiver or completion of 212(e) Two-Year Home Residency Requirement if currently or previously on J-Visa**

☐ H-4 Application: If you have dependent family members who are already in the U.S and you would like to change/extend their status as an H-4 dependent, include the following:

- Form I-539 (available on www.uscis.gov site) and check for $370 made payable to **Department of Homeland Security**
- Include the above starred (**) items for your family members
- Plus $85 biometric fee (new requirement starting March 11, 2019).

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H-1 B – Application

H-1B PROCESSING STEPS (continued)

OFFICE OF INTERNATIONAL PROGRAMS:

• Once the Office of International Programs receives the Enclosure A section from the department as well as the Enclosure B section and documents from the applicant, the Office of International Programs can start processing the H-1B application.

• The Office of International Programs will first process the Prevailing Wage Request.

- The hiring department is required to pay the H-1B applicant the prevailing or actual wage, whichever is higher, and check this wage every 36 months. The Office of International Programs will assist the hiring department in obtaining the prevailing wage and actual wage.

- Once the prevailing wage is known, the Office of International Programs will process the Labor Condition Application (LCA) and the department will be requested to post the LCA in two locations at the H-1B applicants intended work site for ten (10) working days. At the end of the ten days, the department must make a formal statement attesting that the posting took place, including the location and dates of posting. The attestation will be kept in a public inspection file, kept in the Office of International Programs.

• The Office of International Programs will also create the I-129, H-1B Application Form.

- The I-129 must be approved by the Director of Human Resources before it may be submitted to US Citizenship and Immigration Services.

• Once the LCA has been created and the I-129 has been approved by HR, the Office of International Programs will compile and send the H-1B application, including the filing fees and offer of employment from the department and copies of all documents supplied by the applicant.

US CITIZENSHIP AND IMMIGRATION SERVICES:

• Once the USCIS receives the complete H-1B application and filing fees, they will send the Office of International Programs an I-129 Receipt Notice, which is an official notice indicating the date that the application was received and giving the applicant a receipt number. With the receipt number, the status of the application may be tracked on the USCIS website: www.uscis.gov.

• When the H-1B petition is approved, USCIS will send the I-797 approval notice to the Office of International Programs. The applicant, the department, and Human Resources will be notified of the approval. Copies of the I-797 approval notice will be given to the applicant and Human Resources. The original approval notice will be kept in the Office of International Programs.