

**Auburn University
Office of International Programs**

**POLICIES AND PROCEDURES FOR HIRING FOREIGN
NATIONALS ON H-1b VISAS**

Administrative/Professional Appointments

September, 2012

The H-1b is considered a "temporary" non-immigrant visa applicable to the hiring of foreign nationals into a "specialty" position where a baccalaureate degree is considered the normal minimum requirement to perform the job duties. An H-1b is issued by the U.S. Citizenship and Immigration Service (USCIS) for an initial 3 year period with an additional three year extension available for a maximum of up to 6 years. An H-1b petition is filed on behalf of the employer; it does not "belong" to the employee. An H-1b visa is considered "portable" as long as the new employer petitions the USCIS for approval. The 6 year maximum is cumulative.

There are two major components of the hiring process. The first relates to Auburn University's hiring procedures. The second relates to the visa application process. These processes are each distinct, occur in sequence, and must be done correctly. If the employee is transferring to Auburn and already has an H-1b, the process is similar but not identical. There are several specific steps to the H-1b process, all of which are based on immigration law requirements. It is strongly suggested that the hiring department work closely with the Office of International Programs (OIP) before and during the hiring process to be sure the correct steps are followed.

The following procedures and policies apply specifically to individuals hired in administrative and professional positions through the Department of Human Resources. It does NOT apply to faculty hires through the Office of the Provost. Check the OIP website for faculty hiring procedures.

Contents

| | |
|------------------------------------|---|
| A. The Candidate Selection Process | 2 |
| B. The Visa Application Process | 3 |
| C. Employees Transferring an H-1b | 5 |
| D. Final Employment Procedures | 5 |
| Appendix I. Candidate Documents | 7 |
| Appendix II. Sample Forms/letters | 8 |

A. The Candidate Selection Process

1. Administrative/Professional jobs must be posted on the Human Resources web site at www.auemployment.com according to the standard procedures for recruitment. **Only jobs which have an absolute minimum requirement of a Bachelor's degree or higher can be considered for H-1b sponsorship.**
2. All jobs are subject to open competition and require applicants to comply with the University's standard application process.
3. If it is at all likely that a foreign national will be in the applicant pool and the department is willing to sponsor an H-1b visa for a foreign national applicant, it is recommended that a prevailing wage be requested from the OIP at the beginning of the search. Foreign nationals may be dropped from the applicant pool if the hiring department is unwilling or unable to pay the prevailing wage.

NOTE: The timing of the prevailing wage request and its relation to the filing process need to be kept in mind. Prevailing wage requests are sent to the U.S. Department of Labor via U.S. mail. Currently response time is approximately four to eight weeks. For a fee of approximately \$175 (subject to change), a prevailing wage can be obtained through Fisher & Phillips in approximately one to two weeks. **A prevailing wage is only valid for the year July 1 through June 30.** Therefore, a second prevailing wage must be requested if the original prevailing wage was requested prior to June 30 but date of the H-1b filing with the USCIS will not occur until July 1 or after.

4. All applicants are required to indicate on the application if they are currently legally authorized to work in the U.S. and whether they will need sponsorship for an employment visa. If the candidate identified as the Finalist indicates he/she will need sponsorship, the department should instruct the candidate to contact the OIP prior to requesting a background check and salary referral from Human Resources. This will give the OIP an opportunity to determine if there are any work authorization issues which might disqualify the foreign national candidate.
5. Human Resources requires that a background check be conducted on the Finalist. After the OIP has determined that there are no disqualifying work authorization issues, the hiring department must inform the Employment Specialist that the Finalist has been identified so that the required documentation can be requested from the Finalist. This background check must be cleared before a salary referral will be provided.
6. Human Resources will provide a salary referral in accordance with the University's salary administration guidelines. If this amount is less than the prevailing wage, then the department must request an exception from Human Resources to pay more than the salary referral. This request must be routed through the HR Liaison for approval before being submitted to Human Resources. Human Resources will make the appropriate authorities within the chain of command aware of any internal equity issues that may be created as a result of granting the requested exception. The Department of Labor requires that an

employer must be able to fully justify paying a foreign national in excess of other similarly situated employees. Therefore, there is no guarantee that the request will be approved. If not approved, then the department will not be able to hire the foreign national and will need to select another candidate.

7. The standard process for approval to extend an official offer must be followed, i.e., the departmental Hiring Manager must enter required information justifying the selection decision into the University's online employment system for review and approval by Human Resources and/or Affirmative Action. **NO OFFICIAL OFFER OF EMPLOYMENT MAY BE EXTENDED UNTIL HUMAN RESOURCES GIVES THIS APPROVAL.**
8. Due to the unique aspects of hiring someone on an H-1b visa, an offer letter is a required component of the hiring process. In addition to other pertinent information, offer letters must have contingency wording so that the foreign national candidate is made aware that the employment offer is subject to being rescinded if visa or Department of Labor problems arise. A sample offer letter can be obtained from the OIP.
9. Once the offer is extended and accepted, the department should immediately contact the OIP so that the H-1b visa application process can begin. The hiring department must submit the following to the OIP:
 - a. a copy of the offer letter,
 - b. an approved PAF authorization form, and
 - c. the signed Prevailing Wage Determination Memo.
NOTE: A prevailing wage should have been requested in the early stages of the hiring process. The Prevailing Wage Determination Memo was provided to the hiring unit by the OIP. The memo must be signed by the hiring department attesting to their willingness to pay the prevailing wage.
 - d. a signed Release of Controlled Technology or Technical Data Form
NOTE: This form must be completed and signed by the Department Chair and the Research Security Officer.

B. The Visa Application Process

The visa application process has many components, most of which are guided by federal law. The Finalist and the hiring department must work in close cooperation with the OIP to insure the procedures are followed according to federal guidelines. There are three major steps in the process of obtaining an H-1b visa:

1. A prevailing wage determination must be made for the open position.
2. A Labor Condition Application (LCA) must be filed with the U.S. Department of Labor (DOL).

The LCA is filed on behalf of Auburn University by Fisher and Phillips, LLP of Atlanta, Georgia, the "Attorney of Record" for Auburn University in these matters. Before the LCA can be filed with the DOL, Auburn University must provide Fisher and Phillips, LLP documentation that we have met federal requirements.

To obtain an LCA, Auburn University must attest to the following items:

a. The foreign national will be paid the prevailing wage or the actual wage whichever is higher. The signed Prevailing Wage Memo will satisfy this requirement.

b. Similarly employed workers have been notified of Auburn University's intent to fill the position with an H-1b foreign national.

NOTE: The OIP sends out the posting notices to the department accompanied by a Posting Notice. Federal law requires that notifications be posted in **2 conspicuous locations** within the department for **10 business days**. Once the notices have been posted, the department should fill out the instruction page and return it to the OIP.

c. Employment of the foreign national will not adversely affect U.S. workers.

d. There is no strike or lockout in effect at the time of the filing.

NOTE: After receiving documentation of correct posting, the OIP will send a copy of the posting notice to Human Resources along with a lock-out memo. Based on this documentation, Human Resources will sign the lock-out memo satisfying the requirements of both (c) and (d) and return the memo to the OIP.

3. An H-1b petition is filed with the USCIS.

The OIP notifies Fisher and Phillips, LLP upon completion of the LCA requirements. Fisher and Phillips, LLP then electronically files for an LCA Certificate from the DOL. Upon receipt of this certificate, Fisher and Phillips, LLP then completes the H-1b application form (I-129, Petition for a Nonimmigrant Worker) and sends it for review and signature by the OIP. Upon signature from Auburn University, Fisher and Phillips LLP then files the petition with the USCIS.

NOTE: The prevailing wage used in the petition must be valid **on the date of the filing**. A prevailing wage is valid only from July 1 to June 30 of any given year.

If the Finalist is outside of the U.S. during the petition process, the approval materials are shipped to the Finalist by Fisher & Phillips, LLP. The Finalist can make a visa appointment with the nearest U.S. consulate once they have received the approval materials.

No Finalist can begin employment until the effective approval date on the petition.

COST OF THE VISA APPLICATION PROCESS

The H-1b visa filing fees charged by the USCIS are currently \$825. This fee must be paid by the hiring department. In addition there are currently attorney fees of \$1,500 - \$2,500, which are paid by the department.

PREMIUM PROCESSING: The H-1b petition typically takes 2 - 4 months for approval after filing with the USCIS. If the hiring department or the Finalist determines this is unsuitable, they may opt for "premium processing," which guarantees the visa petition will be reviewed by the USCIS within 15 business days from the date received by USCIS. The cost of premium processing is currently \$1,225.

C. Finalists Transferring to Auburn University with an Existing H-1b

If the Finalist already has an H-1b, he/she must work with the OIP to complete and submit a full H-1b petition to the USCIS. All individuals transferring an H-1b must maintain employment with their current employer until OIP receives notice of receipt of the petition from USCIS. **INDIVIDUALS TRANSFERRING AN H-1B TO AUBURN UNIVERSITY CANNOT BEGIN EMPLOYMENT UNTIL THE USCIS VERIFIES THEY HAVE RECEIVED THE PETITION.** The individual transferring the H-1b may then be employed for up to 240 days at Auburn while awaiting final approval. This is known as the "portability provision".

D. Final Employment Procedures

1. When the H-1b visa petition has been approved and the candidate has arrived to begin employment, the individual must go to the Office of International Programs to receive employment counseling and complete the Alien Employment Verification & Tax Form. The date of employment cannot precede the date on the I-797 (Notice of Approval).
2. The following paperwork is to be sent through required channels to Human Resources by the hiring unit:
 - PAF Authorization Form
 - Personal Data Form
 - A-4 Form for Alabama Tax w/h
 - Alien Employment Verification & Tax Form
 - I-9 Form with copies of supporting documents attached
(Must be processed within 3 days of hiring date, with no exceptions)
 - W-4 Form
 - Copy of Social Security card or proof of application*
 - Direct Deposit Form

NOTE: The Social Security Administration does not allow foreign nationals to apply for a social security card prior to 10 business days after their arrival in the U.S. Timing of their arrival is therefore critical to insure the employee gets on the payroll early enough to get paid on the first available payroll period.

This paperwork must arrive in Human Resources no later than the third day of hire in order to ensure compliance with Federal requirements regarding employment eligibility documentation.

3. Failure to meet the third day of hire deadline with the appropriate and duly completed documentation will result in the employee not receiving pay in a timely manner. Missed deadlines will result in the employee being paid on the next available pay cycle.

APPENDIX I

Documents to be Provided by the Candidate in Support of an H-1b Petition

- Beneficiary Information (and dependents information if applicable)
 - Full Legal Name of Beneficiary including all other names used (maiden name and names from all previous marriages if applicable)
 - Job title and detailed job description including minimum qualifications for hire
 - Salary
 - Social Security Number and a copy of the card
 - City, province/state, and country of birth (country of citizenship if different)
 - U.S. address of beneficiary (if in the U.S.)
 - Permanent address in foreign country of last address abroad
 - Location (city) of U.S. Consulate/Embassy closest to residence abroad
 - Present visa status and expiration date of present authorized stay
 - Date and location (port of entry) of last entry into the U.S.
 - Date and type of all (if any) prior immigration filings
 - Dates of any prior H-1B, H-4, L-1, or L-2 stay in the U.S. (entry and exit dates)
- Supporting Documents required for H-1B Petition
 - Resume or C.V.
 - Copy of degree(s) (with English translation if applicable)
 - Copy of transcript(s) (with English translation if applicable)
 - Copy of credentials equivalency evaluation (if available for foreign degree(s))
 - Copy of all (if any) prior immigration filings (if available)
 - Copy of front/back of Arrival/Departure Record (I-94 card) (include dependents)
 - Copy of all passport pages (include dependents)
 - Copy of Employment Authorization Document (work permit) (if applicable)
 - Copy of all Forms I-20 (applicable to F-1 students)
 - Copy of all Forms IAP-66 or Forms DS-2019 (applicable to J-1 Exchange Visitors)
 - Copy of approved waiver of two-year foreign residence requirement (if applicable to J-1 Exchange Visitor)

APPENDIX II

Sample Forms/Letters

- 1. Prevailing wage notification letter**
- 2. Posting Notice Memorandum**
- 3. Posting Notice**
- 4. No Strike or Lockout Letter**
- 5. Release of Controlled Technology or Technical Data Form**

MEMORANDUM

Date:

TO:

FROM:

**Sue Ann Balch, J.D.
Assistant Director**

RE: H-1B Prevailing Wage for

The U.S. Department of Labor recently sent me the attached prevailing wage determination as required under the US Department of Labor procedures. Our records indicate the following:

- **Auburn University salary offered:** \$ _____
- **Prevailing Wage as determined by the U.S. Department of Labor:** \$ _____
- **Prevailing Wage Expiration Date:** ___/___/___

According to the regulations as long as the wage you will be offering is equal to or greater than the Prevailing Wage determination or the actual wage (average wage as determined by HR or similarly situated persons on campus) the department may continue with the process of hiring the candidate indicated. Please be aware that there are several additional stages to this process:

1. Determination of who will complete the final H-1b petition (see table below)
2. Filing a US Department of Labor “Labor Conditions Application”
3. When the LCA is prepared a notice will be sent to you requesting a posting of a “Notice of Intent to Hire” for 10 business days in a conspicuous location. This notice will indicate the title of the position and salary offered. A public inspection file must be established in the Office of International Programs as part of this process.
4. Filing the actual H-1b and any accompanying dependents petitions may proceed once item 2 is posted. **Please note all LCA and H-1b petitions must be signed and recorded by OIP.**
5. For more information please check the employment section at: <http://www.auburn.edu/international>
Upon receipt of this letter please sign below and return a copy (fax or campus mail) with any additional information/questions on the process noted above or on the web site.

I acknowledge receiving the Prevailing Wage determination. The department wishes to continue the process of hiring this candidate. The department has made the following arrangements with the candidate for processing the LCA/H-1B application

____ (**Initial**) I understand that all legal fees and filing fees associated with the cost of tis visa will be paid by the hiring department. (approximate cost is \$2,500 – this figure does not include the costs associated with premium processing, which is an extra \$1,225 in fees)

____ (**Initial**) I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the beneficiary is dismissed from employment by the employer before the end of the period of authorized stay.

____ (**Initial**) I certify that the beneficiary will be working on a cooperative research and development project or a co-production project under a reciprocal government-to-government agreement administered by the U.S. Department of Defense (Needs to be initialed only if this is true).

| | | |
|--------------------|-----------|-------|
| • Department Chair | Signature | |
| PRINTED NAME | | Email |
| Department | | Date |
| • Dean | Signature | Date |
| PRINTED NAME | | Email |

PLEASE ATTACH A COPY OF APPROVED PROV100 FORM or other hiring authorization, a copy of the letter of offer and a copy of the job advertisement

MEMORANDUM

DATE:

TO:

FR: Sue Ann Balch, J.D
Assistant Director, International Students and Scholars Services

RE: H-1B Application Processing –

The attorney of record for this applicant has filed a request for signature by this office documents required as part of the H1-b application process.

I will approve the prepared Labor Condition Application (LCA) with the Department of Labor; however as part of the LCA process we are required to post notices of this filing in at least two conspicuous locations for 10 business days. Enclosed, please find two copies of the LCA posting notice. Please post these notices in conspicuous locations in your department (bulletin boards, coffee room, etc.) and/or other campus locations for the next two weeks. **Please note:** I cannot send the LCA to be filed until I receive confirmation from you that these notices have been posted. Please return this confirmation with original signature to me upon **the first day of posting.**

When you have displayed the notices, please complete the following information and return this memo to me via fax at 844-4983.

Please return the posting notices to my office for the LCA file AFTER they have been removed following the last date of the posting.

Thank you for your cooperation.

I have posted the LCA notices in the following locations:

1. _____
2. _____

They will remain posted until _____
Date

Signature

Date

NOTICE

Notice to all _____, _____, Auburn University intends to fill the position of _____, _____, by hiring one alien pursuant to an H-1B visa for a temporary period of 3 years at the _____ month salary of \$ _____.

A Labor Condition Application and supporting documentation are on file at the Office of International Programs and Services, 228 Foy Hall, Auburn University, AL 36849, and may be examined upon request.

Complaints alleging misrepresentation of material facts, or failure to comply with the attestations made in the Labor Condition Application, may be filed with any office of the Wage and Hour Division of the United States Department of Labor.

Date Posted: _____

Date Removed: _____

Location of Posting: _____

Department Head – Name and Signature: _____

THIS DOCUMENT MUST BE RETURNED TO THE OFFICE OF INTERNATIONAL PROGRAMS (228 Foy Hall) FOLLOWING CONCLUSION OF POSTING DATE.

For OIP USE ONLY – Case File # -

DATE:

TO: Lynne Hammond
Assistant Vice President, Human Resources

FROM: Sue Ann Balch, J.D.
Immigration Employment Coordinator

SUBJECT: LCA Documentation File for

Your signature below indicates the following:

*As of the date shown above, there was no strike or lockout affecting the position of _____ in the
Department of _____, _____ at Auburn University located in Auburn, Alabama.*

Signature

Date: _____

**QUESTIONS RELATING TO RELEASE OF CONTROLLED TECHNOLOGY
OR TECHNICAL DATA TO FOREIGN PERSONS**

H-1B Employee: _____ **ID:** _____

For all H-1B and H-1B1 petitions, you must certify either that a license is not required for the position offered to the foreign national under the Export Administration regulations (EAR) and the International Traffic in Arms Regulations (ITAR) or that a license is required and that you have either obtained the required license or will not release the controlled information to the foreign national until the license is received. In connection with this requirement, please review the attached checklist and information sheet and answer the following questions:

1. Will you be releasing any technology (as defined by EAR, Export Administration Regulations) or technical data (as defined by ITAR, International Traffic in Arms Regulations) to the foreign person? Yes _____ No _____

If yes, please answer the following questions. If no, stop here.

2. Are you required to obtain a license for the foreign national from the U.S. Department of Commerce (USDOC) and/or the U.S. Department of State (USDOS) to release controlled technology or technical data? Yes _____ No _____

If you checked no, stop here. If you checked yes, please answer the following questions:

We will not release the controlled technology or technical data to the foreign national until and unless we have received the required export license or other authorization to release the information. Yes _____ No _____

We have obtained an export license from the USDOC or USDOS to release the identified information to the foreign national?

Yes _____ No _____. If yes, please provide a copy of the license.

Dept. Chair: _____ Date: _____
Signature

Research Security Officer: _____ Date: _____
Georgia White, 3528 Advanced Engineering Research Laboratory