

## H-1B Petition for a Nonimmigrant Employee

**Effective Date:** March 29, 2018

**Function:** Human Resources

**Contact:** [HRA@rfsuny.org](mailto:HRA@rfsuny.org)

### Basis for Procedure

The H-1B visa is for the temporary employment of noncitizens in specialty occupations. Employers that require the services of a noncitizen on a temporary basis use the petition to request that the USCIS approve the employment of a noncitizen as a temporary worker. If the petition is approved, the noncitizen may apply for or amend their H-1B visa status.

The petition must be used by the RF to request:

- classification of a noncitizen outside the U.S. as eligible for an H-1B visa.
- classification of a noncitizen in the U.S. on a different type of visa as eligible for an H-1B visa.
- a change to a different employer for an H-1B visa holder.
- an extension of stay for an H-1B visa holder currently working for the employer.

**Note:** Employers intending to use the petition must first obtain a certified labor condition application from the Department of Labor. For more information, see [Labor Condition Application \(LCA\) for H-1B and E-3 Nonimmigrants](#).

### Procedure Summary

This document describes the procedures operating locations need to follow to submit a "Petition for a Nonimmigrant Worker," Form I-129.

### Procedure Steps

#### Legal Counsel

The Research Foundation (RF) recommends that noncitizens who are the beneficiaries of an H-1B petition obtain legal counsel to represent them during the process. The RF has retained services of Harris Beach PLLC, Attorneys at Law firm to assist with all immigration issues. To learn more about the firm you may visit their website at <https://www.harrisbeach.com/> or you may directly contact Leonard J. D'Arrigo, Partner at (518) 701-2770 or email [ldarrigo@harrisbeach.com](mailto:ldarrigo@harrisbeach.com).

When legal counsel is retained by the beneficiary, any document forwarded by the attorney to the operating location for signature – such as a labor condition application, an I-129, or an authorization to act as an agent of the RF – must be reviewed and signed by the Operations Manager or designee.

**Note:** A Principal Investigator may not be the named representative.

## Fees

All applications or petitions submitted to the USCIS must include the current fee, as listed on the USCIS Web site. (See also USCIS information for temporary workers.) The fee for filing the "Petition for a Nonimmigrant Worker" is paid by the prospective H-1B employee or the project, if allowable.

On March 8, 2005, a new regulation went into place that added a "Fraud Preventions and Detection Fee" of \$500 that employers must pay for the following applications: new, change of status, and change of employer. It is generally allowable to charge this fee to the award/grant; however, a campus representative should work with the sponsored program administrator to verify that this is an allowable charge on the award.

For instances in which it is appropriate to request Premium Processing of an H-1B application, the RF would pay the \$1440 fee.

## Completing H-1B Data Collection and Filing Fee Exemption Supplement Section of Form I-129

The "H-1B Data Collection and Filing Fee Exemption" is a supplement to Form I-129, "Petition for a Nonimmigrant Worker". This supplement is used to collect additional information about the H-1B nonimmigrant worker and the H-1B petitioner (i.e., the U.S. employer). This supplement is also used to determine whether the H-1B petitioner is exempt from the additional filing fee imposed by the American Competitiveness and Workforce Improvement Act (ACWIA).

Although, as a nonprofit research organization, the RF is exempt from additional filing fees imposed by the ACWIA, the USCIS requires all employers to complete the supplement, which must be filed with the petition. For more information, see the section of this document, "Submitting the Petition."

The following table describes how to complete various sections of the H-1B Data Collection and Filing Fee Exemption Supplement to Form I-129.

Question	Response
<b>Part 1. General Information</b>	
1a. Is the petitioner an H-1B dependent employer?	Check <b>No</b> . The RF is not an H-1B dependent employer.
1b. Has the petitioner ever been found to be a willful violator?	Check <b>No</b> .
1c. Is the beneficiary an exempt H -1B nonimmigrant exempt from the Department of Labor attestation requirements?	Complete all information related to beneficiary according to the instructions provided by the USCIS.
1d. Does the petitioner employ 50 or more individuals in the US?	Check <b>Yes</b> . The RF employs more than 50 individuals in the US.
d.1. If yes, are more than 50% of those employees in H-1B or L-1A, or L-1B nonimmigrant status?	Check <b>No</b> . Less than 50% of RF employees are in those nonimmigrant statuses.
<b>Part 2. Fee Exemption and/or Determination</b>	
1. Are you an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965, 20 U.S.C. section 1001 (a)?	Check <b>No</b> .

Question	Response
2. Are you a nonprofit organization or entity related to or affiliated with an institution of higher education, as defined in 8 CFR 214.2(h)(19)(iii)(B)?	Check <b>Yes</b> . Submit a copy of the <a href="#">RF charter</a> as evidence of the RF's nonprofit status. The Charter can be found on the About Us page of the RF website.
3. Are you a nonprofit research organization or a governmental research organization, as defined in 8 CFR 214.2(h)(19)(iii)(C)?	Check <b>No</b> .
Questions 4, 5, and 6 should be answered as applicable to the situation and the operating location.	
7. Is the petitioner a primary or secondary education institution?	Check <b>No</b> .
8. Is the petitioner a non-profit entity that engages in an established curriculum-related clinical training of students registered at such an institution?	Check <b>No</b> .
9. Do you currently employ a total of 25 or fewer full-time equivalent employees in the United States, including all affiliates or subsidiaries of this company/organization?	Check <b>No</b> .
<b>Part 3. Numerical Limitation Information</b>	
1. Specify the type of H-1B petition you are filing.	Check d. <b>CAP Exempt</b>
2. N/A	N/A
3. If you answered <b>Item Number 1.d. "CAP Exempt,"</b> you must specify the reason(s) this petition is exempt from the numerical limitation for H-1B classification	Check b.
<b>Part 4. Off-site Assignment of H-1B Beneficiaries</b>	
Questions 1, 3, and 3 should be answered as applicable to the situation	
Certification	
Signature	Must be signed by the operations manager or designee.

### Export Controls

The Form I-129 includes a "Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States," otherwise known as export controls.

There are five phases to the export controls license request process: Assessment, development, review and submission, determination, and implementation. For more information on the process, please see the [Export Controls License Request Process](#). The export control determination must be made prior to submitting the Form I-129.

Documentation of the final export control determination should be retained in the H-1B/O1 file.

If it is determined that a license is not required, the beneficiary may begin working with the relevant technology when the petition is approved. If a license is necessary, it must be applied for and obtained before the beneficiary is given access to the controlled technology or data.

An employer must start paying the regular salary of an H-1B worker as soon as employment begins. Although rare, if an export license is required for the beneficiary they should be assigned to alternate duties while waiting. Contact Central Office Human Resources with any questions regarding H-1B employment.

### **Submitting the Petition, Form I-129**

The petition must be:

- signed by the Operations Manager or designee.  
**Note:** A Principal Investigator may not sign as the responsible officer for the RF on H-1B petitions.
- submitted in duplicate to the USCIS regional service center having jurisdiction over the place in which the noncitizen is to be employed.
- The petition must be accompanied by:
  - supporting documents specified in the instructions on the petition.
  - a labor condition application reviewed and certified by the DOL.
  - documentation supporting the petitioning employer's contention that the services to be performed require an individual who possesses a bachelor's, master's, or Ph.D. degree and that the noncitizen is qualified to assume that position; such information should be on RF letterhead and accompanied by a copy of the job description, an offer of employment letter confirming the appointment with the RF, and copies of any degrees, academic records, or licenses held by the noncitizen
- a filing fee, paid by the prospective H-1B employee or the project.
- USCIS Fraud Prevention and Detection fee, paid by the prospective employer.
- H-1B Data Collection and Filing Fee Exemption Supplement to Form I-129, to exempt the RF from additional filing fees a copy of the RF Charter, as evidence of the RF's nonprofit status.
- a statement certifying that the RF will fully comply with the labor condition application and will pay for the return trip if necessary.
- If the noncitizen is already in the U.S. in some other nonimmigrant status and wishes to obtain H-1B status, the petition must state the current status, and a copy of the noncitizen's Arrival Departure Record (I-94) must be attached. When the petition is approved, the noncitizen's application for change of status will be adjudicated.
- If the noncitizen is in the U.S. in H-1B status sponsored by another employer, the petition must state that the noncitizen wishes to extend his or her time of temporary stay, and a copy of Form I-94 must be attached to the petition with the prior H-1B approval notice(s) and fee.

### **USCIS Review and Approval Process**

USCIS will notify the employer on Form I-797B (Notice of Approval) upon approval or rejection of a petition.

Processing time for an H-1B petition generally ranges from two to six months from the time the petition is submitted to USCIS but can be approved as early as two months.

If the noncitizen is already in the U.S., the employer notifies the noncitizen after receiving Form I-797B. The noncitizen should be given the original approval notice, and a copy should be kept in the employee's file.

If the noncitizen is not already in the U.S., the USCIS sends the approved petition and/or notification of approval of the petition to the U.S. consulate where the noncitizen will apply for an H-1B visa. In the case of Canadian citizens, USCIS will notify the appropriate port of entry because Canadians are exempt from

passport and visa stamp requirements. After receiving the H-1B visa, the noncitizen can be admitted into the U.S. in H-1B status (assuming that the noncitizen is not excluded from entering for some other reason).

### **Duration**

The approved petition is valid for the period of employment on the labor condition application, which is a maximum of 3 years.

### **Requesting Extension**

The petition is also used to request an extension for an H-1B visa holder through the USCIS. Any extension petition must be accompanied by a duly reviewed labor condition application.

**Note:** The H-1B visa is for temporary employment. Typically, the maximum total stay in H-1B status is 6 years. However, an extension of H-1B worker status may be granted in one-year increments if the applicant has filed for lawful permanent residence and is waiting adjudication of an application that has been on file for more than 365 days.

The extension must be filed no sooner than 6 months before expiration of the original petition.

The request for an extension of temporary stay must be accompanied by a certified labor condition application, a copy of the approval notice (Form I-797B) of the initial petition, Form I-94 (Nonimmigrant Arrival/Departure Record), a letter from the petitioner explaining the reasons for the extension, and a filing fee.

### **Record keeping**

A copy of the approved petition and supporting documentation should be kept on file as part of the employee's personnel records.

### **Definitions**

None

### **Related Information**

Note: Employers intending to use the petition must first obtain a certified labor condition application from the Department of Labor. For more information, see [Labor Condition Application \(LCA\) for H-1B and E-3 Nonimmigrants](#).

[Export Controls Home Page](#)

### **Forms**

[Petition for a Nonimmigrant Worker \(Form I-129\)](#) is downloadable in [PDF format](#) from the U.S. Citizenship and Immigration Services (USCIS) [Immigration Forms](#) page. Download instructions are also available. A fee is required for submitting the petition. This form is also available from the Forms By Mail link on the USCIS web site.

Noncitizen Employment Forms are available in [this document](#).

The [RF charter](#) can be found on the RF website.

## Change History

Date	Summary of Change
December 3, 2024	Updated to reflect the recommended immigration attorney, Harris Beach PLLC's contact information.
January 19, 2021	Updated premium processing fee and RF logo.
March 29, 2018	Updated document to reflect changes on Form I-129. Revised estimated processing time.
December 23, 2010	Updated Part A and Part C and added Part D in the H-1B Collection and Filing Fee Exemption Supplement Section. Added Export Controls Section.
February 21, 2006	Changed Form I-129W requirements to reference the supplement name rather than the form name (Form I-129W is obsolete).
November 21, 2005	Changed title of Labor Condition Application (LCA) document.
March 8, 2005	Added information about Fraud Prevention and Detection fee. Changed references to INS to USCIS, per 2003 federal name change.
February 27, 2001	Updated instructions for completing Form I-129W, which was revised on 12/18/00. Revised estimated INS processing time. Clarified "Requesting Extension" section.

### Feedback

Was this document clear and easy to follow? Please send your feedback to [webfeedback@rfsuny.org](mailto:webfeedback@rfsuny.org).