

**Office of International Affairs  
Clemson University**

**H-1B Employee Information**

**Introduction**

*H-1B Employee Information* is required reading for all foreign employees who are authorized employment at Clemson University under H-1B status **or** those employees who will be changing their work authorization to H-1B, i.e. changing from the F-1 student Optional Practical Training work benefit to H-1B employee work benefit. Not all cases are identical and it is impossible to address each employee's individual situation. If you have any questions that are not answered by the following information, please contact Jim Findley, Director of International Faculty and Staff Services in the Office of International Affairs (OIA), in E-303 Martin Hall at 864-656-0490 or [findlej@clemson.edu](mailto:findlej@clemson.edu). You are the specified beneficiary on your employer's petition to the US Government requesting permission for you to remain in the US; therefore, you have legal obligations to both your employer and to the government.

This information will assist you in understanding your obligations related to your job duties at Clemson University which are required to maintain your legal status, notices to the government of changes to your address while in H-1B status, maintaining legal status for your spouse and children and traveling outside the US while in H-1B status.

Plan ahead. Do not wait until the last minute to communicate with International Faculty and Staff Services about your situation. We are here to assist you but cannot offer proper advice and assistance unless we know you are in need.

**The Basics**

H-1B status allows US employers to hire a qualifying foreign national (H-1B beneficiary) temporarily in a certain type of employment position called a specialty occupation. The employer is responsible for petitioning the US Citizenship and Immigration Services (USCIS) to obtain permission to hire a particular foreign employee to fill a position which requires at least a bachelor's degree or its equivalent in the field. A foreign employee cannot apply for nor obtain the H-1B status. The Office of International Affairs (OIA) is responsible for submission of all Clemson University petitions for H-1B status.

The H-1B status is employer-specific and job-specific. The H-1B benefit for a foreign national employee is a maximum of 6 years duration (granted in increments of up to 3 years each).

**Notice of Action (Form I-797)**

Form I-797 Notice of Action is a one-page legal document sent to the employer when its petition for an H-1B status has been approved. If the employee is already in the US and is applying for a change of status and/or extension of stay for the foreign employee, a new Form I-94 Departure record is attached to the Form I-797 which reflects the following information:

1. Petitioning employer (Clemson University)
2. Legal benefit status in the section titled “Class” (H-1B)
3. Validity dates of the employer’s approved H-1B status and the employee’s work benefit
4. Name, date of birth and citizenship of employee (H-1B beneficiary)

At Clemson University, a copy of the Notice of Approval is given to the employee by the Director of International Faculty and Staff Services in E-303 Martin Hall. The employee must present the copy of Form I-797 when completing an I-9 form for payroll. The original Form I-797 will be provided to the employee to be used as evidence of nonimmigrant status and for travel purposes as needed (presenting to US embassy and/or border officials).

### **H-1B Beneficiary Status (I-94)**

H-1B beneficiary status is documented on Form I-94 Departure Record and is obtained by an employee who:

- a. Comes to the US in another nonimmigrant status (such as F-1, J-1) and subsequently is approved for a “change of status” to H-1B beneficiary by USCIS,

or

- b. Presents an H-1B visa and Form I-797 Notice of Approval at a US port of entry and is granted H-1B beneficiary status by a US Customs and Border Patrol agent

The H-1B employee may remain in the US as long as he or she maintains the specified employment with the employer who petitioned for the H-1B status and until the expiration date of H-1B as shown on Form I-797 Notice of Action (issued to the employer) and Form I-94 Departure Record (issued to the employee).

### **H-1B Visa**

In order for a foreign national employee to be granted H-1B status upon entry to the US, the employee (applicant for admission into the US) must present a valid passport which contains a valid H-1B visa, and Form I-797 Notice of Approval. To obtain an H-1B visa in his/her passport, a foreign national must present to a US consulate abroad the I-797 Notice of Approval issued to the employer and copy of the I-129 Petition for a Nonimmigrant Worker submitted to USCIS by the employer. The employee may continue to reside and work in the US for the petitioning employer following expiration of the H-1B visa as long as his/her H-1B status has not expired.

### **To Obtain or Extend H-1B Beneficiary Status**

#### **H Transfers (Portability)**

Portability is the official term used by USCIS when an employee already holds H-1B work authorization and “transfers” that H-1B benefit from one employer to another.

In order for the employee to begin working for a new employer, that new employer must file an entirely new H-1B petition. This must be done prior to the expiration of the first H-1B status, or prior to the employment being terminated, whichever comes first. In most cases, having one H-1B petition approved will not make it any easier to get an approval based on a second employer's petition.

Note: According to immigration law which went into effect October 17, 2000, an employee may begin working as soon as the new employer files the H-1B petition with USCIS. It is not necessary to wait for the petition to be approved. At Clemson University, the normal procedure is to wait for the USCIS to send an application receipt notice to Clemson. Then the employee can fill out the I-9 Form for payroll purposes using the receipt along with their passport, I-94 card and original H-1B Notice of Approval from their previous employer.

Employees and employing departments should consult closely with OIA about timing of a petition and about any travel outside of the US prior to USCIS approval of the petition.

### **Change of Immigration Status**

#### **Persons in the US**

Employees already in the US on a nonimmigrant status other than H-1B may be able to change status to H-1B. OIA will consult with the department and employee about any issues affecting the eligibility of the new employee to change status. Departments/employees should consult closely with OIA about the timing of the change of status, about the job start date and about any travel outside of the U.S. during this period. OIA will have to consult closely with the department about factors such as:

1. Whether the employee is subject to the J-1 two year foreign residence requirement,
2. Whether the employee is currently working at Clemson University, and if so, whether the job duties will remain the same or change for the H-1B application, and
3. Whether the employee has maintained legal status

#### **Persons outside the US**

Employees who will come to their H-1B job from outside the US can enter the country no more than 10 days before the beginning date listed on the Notice of Approval (I-797). See [www.travel.state.gov](http://www.travel.state.gov) for information on US embassies, wait times for appointment and preparing for visa interviews.

#### **Change in H-1B Job Duties**

An approved H-1B employer must submit an amended H-1B petition to USCIS when an employee's position undergoes a material change (e.g. duties, title, salary, change of department). Employing departments must notify OIA of any change to your job duties. OIA will determine if the changes are considered "substantial" enough to require an "amended" petition be submitted to USCIS.

## **Request to Extend H-1B at Clemson University**

Departments can request extension of H-1B status for a current position if the duties remain the same and the employee has not used the full 6 years of available H-1B benefit. To apply for extension of H-1B work benefit for an employee, the Designated Official (College or Departmental Contact Person) should go to the H-1B Request Handbook at [www.clemson.edu/IA](http://www.clemson.edu/IA) to start the process.

For payroll purposes, if the University has filed a timely application for an extension of status, the employee is authorized to continue employment for a period not to exceed 240 days beginning on the date of expiration of the previously authorized period of status.

When the approval notice is received at OIA, we will notify the department contact person that your I-94 is ready for pickup. The employee will then need to bring their passport to E-303 Martin Hall to receive the I-94 and update their I-9 record for payroll.

## **Obtain or Extend H-4 Dependent Status**

### **H-4 Dependents**

Once an employee has been granted H-1B status, his/her spouse and children (under 21) will normally be eligible for H-4 status. **If the employee and dependents are in the US**, and if the employing department is requesting that the employee's status be changed to H-1B, dependents may apply for a change to H-4 status. After the H-1B application process has been initiated by the department, the employee will send a completed I-539 Form: Application to Change or Extend Non-immigrant Status. The \$200 USCIS filing fee (paid by the employee) and supporting documents should be submitted to the Director of International Faculty and Staff Services.

**If the dependents are outside the US**, Clemson University does not need to include any information about them in the petition. After the H-1B petition has been approved, the dependents may apply for H-4 visas at the US consulate. Dependents should present a valid passport and proof of their relationship to the employees such as marriage certificate (for spouse) or birth certificate (for children).

Persons in the US with H-4 status may not be employed in the US, but they are allowed to attend school.

## **H-1B Regulations & Policies**

### **Travel outside the US**

A new or continuing H-1B employee who is in the US should not travel outside of the US while the petition is being processed, without first consulting OIA.

If you have H-1B legal status for employment at Clemson University, you may need to travel from time to time. Generally, you need a valid, unexpired H-1B entry visa in your passport for

entry into the US. The H-1B Notice of Approval (Form I-797) is not the same as an entry visa. An entry visa is a stamp in your passport, which you obtain from a US consulate outside the United States. Renewals of the H-1B entry visas are not possible inside the United States. Canadian citizens entering the US in H-1B status are exempt from the entry visa requirement. More information about the visa application process follows; including a list of documents you should carry with you whether or not you have a valid H-1B entry visa.

If any changes to your employment have occurred since your H-1B benefit was approved, contact OIA to discuss whether those changes will affect your visa application. Significant changes could be: changes in job title, full-time to part-time, changes in employing department, changes in job duties, etc. Contact OIA if you have any questions.

Security Advisory Opinions – In the post-9/11 world, security is the primary concern of the US consular officers. In their view, your timely return to work is secondary. Consulates have access to a variety of databases such as criminal activity, terrorism watch lists, etc. If you have had any problems with police, such as convictions of crimes or arrests, these can disrupt a return to the US and you should contact an immigration attorney for advice **before** leaving the US. The visa issuance process requires special scrutiny for people from Iran, Iraq, Libya, Syria, Sudan, North Korea, and Cuba, causing delays. People who have common names may experience delays caused by matching a name in one of the databases used for screening.

If you work with sensitive technology – i.e. technology with application to both military and civilian purposes, be cautious about travel. If you work with high technology, you should carry a letter from your faculty supervisor, which explains, in layman's (nontechnical) terms, the following:

- The nature of the research – what is the aim of the research?
- Where does the research funding come from?
- To what extent is the research already in the public domain?

This type of letter will not avoid a security review but will be useful to the agencies conducting the review and can help speed the process. Some of these clearances have been known to delay return of employees for as long as a year.

This is a list of supporting documents you should have when applying for an H-1B entry visa and for travel into the US:

1. I-797 Notice of Action (Approval Notice)
  2. Copy of employer's I-129 petition
  3. Copy of approved Labor Condition Application
- Note:** OIA provides the above 3 items to you when the H-1B petition is approved by USCIS
4. Updated letter confirming your employment position and salary. The letter offering you the position is often several months old by the time you travel and should be updated as evidence that you still have an employment position when you are applying for a visa.
  5. Copy of your most recent pay statement if currently employed – available from MyCLE at [www.clemson.edu](http://www.clemson.edu). The pay statement helps provide additional evidence that you are currently employed.

6. If you previously had J-1 or J-2 immigration status and obtained a waiver of the 2-year home residence requirement, you will also need the I-797 Approval notice granting the waiver (Approval of your I-612 application for waiver).

**Note:** A letter from the US State Department recommending the waiver is insufficient. You must have the final waiver approval from the USCIS.

H-1B status allows for “dual intent” inside the US. Dual intent refers to the intent to maintain a nonimmigrant status inside the US at the same time as intending to apply for an immigrant status/visa (Lawful Permanent Resident – LPR - status).

1. A US consular officer will not deny an H-1B visa because the employee appears to have applied for LPR, also called a “green card” (immigrant intent).
2. A person with H-1B status can apply for Lawful Permanent Residency (immigrant status) while holding H-1B visa.
3. A person applying for an H-1B visa at a US Consulate is not required to prove intent to return to their home country (nonimmigrant intent).

### **Change of Address Requirements**

Persons in H-1B beneficiary status who are physically present in the US must notify USCIS of all changes in their residential address. This notification must be done by filing Form AR-11 directly with USCIS. Please go to [www.USCIS.gov](http://www.USCIS.gov) to download the form.

### **H-1B Grace Period**

Unlike F and J nonimmigrant status, there is no official “grace period” for person in H-1B beneficiary status after their period of authorized stay in the US ends or after their employment terminates. USCIS has the discretion to give an unofficial grace period of 10 days but this can never be anticipated. The H-1B beneficiary should apply for change of status prior to employment termination or plan to depart the US immediately at the end of their employment (authorized period of stay).

### **Departure from Clemson University**

University departments and/or foreign employees must notify OIA when the employee (H-1B beneficiary) leaves their job and/or departs the US, especially if the job termination occurs before the ending date of the approved H-1B status.