Overview and legal implications of the H-1B status

The H-1B nonimmigrant status is most frequently requested by The University of Texas at Austin (petitioner) on behalf of an individual (beneficiary) coming temporarily to the United States to perform services in a "specialty occupation" (H-1B). A "specialty occupation" is one that requires the theoretical and practical application of a body of highly specialized knowledge. To be eligible for H-1B status, a nonimmigrant must hold a U.S. baccalaureate degree or higher, a foreign degree equivalent to a U.S. degree, a state license to practice the profession, or a combination of education, specialized training and/or experience which can be substituted for a U.S. degree. In addition, the offered employment must require a minimum of a baccalaureate degree or higher to qualify as a position in a "specialty occupation." Other individuals who may qualify for H-1B status are artists, entertainers, or fashion models having national or international acclaim, artists or entertainers in a unique or traditional art form, and nationally or internationally recognized athletes coming to participate in a specific event.

The Immigration Act of 1990, effective October 1, 1991, instituted new requirements for H-1B visa applicants. A "Labor Condition Application" (LCA) must be approved by the U.S. Department of Labor before the H-1B petition may be submitted to U.S. Citizenship and Immigration Services. International Student & Scholar Services is responsible for reviewing and maintaining documentation prepared by the hiring department in support of the LCA and H-1B petition for prospective nonimmigrant employees of The University of Texas at Austin. International Student & Scholar Services will submit the applications to the appropriate federal agencies once the applications and supporting documentation are properly completed.

Please provide accurate information for the completion of these forms. The LCA and H-1B petition require attestations that may subject The University to various penalties. Any aggrieved person or organization may file a complaint during the LCA procedure. Supporting documentation for the LCA must be kept on file and must be available for investigation. Failure to meet a condition stated in the LCA may result in (1) monetary penalties not to exceed $1,000 per violation, (2) employers being barred from filing applications or attestations with the Department of Labor to employ aliens on either a temporary or permanent basis, and/or (3) employers ordered to provide for payment of back wages. The H-1B regulations require The University to attest that it will pay the reasonable cost of return transportation for the beneficiary if the beneficiary is dismissed from employment before the end of the period of authorized employment. Please ensure that the departmental budget provides for such a contingency.

If the prospective employee is currently in the United States maintaining a legal nonimmigrant status (such as F-1 student, B-1/B-2 visitor, or H-1B for another employer) he/she may change status to H-1B or extend H-1B status to begin new employment without leaving the U.S. Some J-1 exchange visitors may be considered subject to the "two year home country physical presence requirement" and are not permitted to apply for H-1B status until they have spent two years in their original country of residence or have received a waiver of this requirement. For further information about the procedure to waive this requirement, request a copy of the "Waiver of the 2-Year Home-Country Physical Presence Requirement" information sheet from International Student & Scholar Services.
If the prospective employee is not currently in the U.S., the employer must request in the H-1B petition that U.S. Citizenship and Immigration Services notify the appropriate U.S. consular post of the approval of the petition. International Student & Scholar Services will forward the original Approval Notice (Form I-797) to the nonimmigrant employee as soon as it is received. If the new employee is outside of the U.S, the form should be used to apply for the H-1B visa stamp at the U.S. consular post abroad. Individuals in H-1B classification may enter the U.S. from a foreign country up to 10 days before the appointment will begin.

Unless the nonimmigrant employee currently holds an immigration status which permits employment*, employment at The University may not begin until approval of the H-1B petition (or the filing of a transfer H-1B petition by UT Austin).

*Please discuss any current immigration status with the Faculty and Scholar Advisor to determine whether the employee is authorized to work at The University of Texas at Austin.