



H1-B Visa Basics for International Students and University Degree Candidates

The H1-B Visa is the most commonly used pathway for graduating international students to obtain permission to stay in the United States and work. If you are thinking about using the H1-B program to remain in the U.S. after graduating, you need to know the requirements of this visa, and just as important, you need to know the timeline for meeting those requirements. Each year, many international students miss the opportunity to stay and work because they did not meet the H1-B milestones within the window of time available to them.

There are certain requirements to obtain this visa you will need to become familiar with:

The H1-B visa is EMPLOYER SPONSORED

You must have an employer willing to sponsor you in order to obtain this visa, there is no self-sponsored option. This means as you near graduation and obtain Option Practical Training (OPT) work permission, you must use this time wisely to identify an employer who needs your skills AND is willing to sponsor you for the H1-B visa after your OPT time is up. If you know an employer who is willing to hire you, but is not familiar with the H1-B process, let us know and we can provide them with the information and assistance they need.

The H1-B visa is for nonimmigrant workers

The H1-B does not, in itself, provide a right to permanent residence in the United States. The H1-B visa provides temporary permission to work in the U.S. for three years, and may be renewed for an additional three years, giving international graduates permission to stay and work for up to six years. If after that time you are ready to return to your home country, or migrate to a third country with your professional qualifications, it is possible to obtain a new H1-B visa after you have been out of the U.S. for at least one year.

The H1-B visa is a “dual intent” visa

In the U.S. immigration system “dual intent” means you *can* use this visa as a *pathway* to permanent residence. The pathway from H1-B to permanent residence is complicated and also requires a willing employer sponsor. It is a separate process from the H1-B process, and requires significant commitment from both the employee/beneficiary and the employer/sponsor. MigrationCounsel can advise you about this process if and when you and your employer are ready.

The H1-B visa is for professional workers in a “specialty occupation”

To qualify for the H1-B visa category you need to have, at minimum, a bachelor’s degree or its equivalent and the job you get must be related to the area of study you have your degree in. In fact, the job must require a bachelor’s degree in a specific field as an entry level qualification. In other words, if you have a degree in accounting, and you get work as an accountant, you qualify. If you have a degree in ethnomusicology, and you get a job selling cosmetics at Nordstrom’s, you do not qualify.

The problem of mis-matched degrees and job descriptions is probably the biggest obstacle we see for graduates obtaining H1-B visas. The USCIS has become quite a bit more strict in enforcing this criteria than in years past, and are asking for additional evidence of job requirements when they have doubts. “Creative” job descriptions will not overcome a fundamental lack of professional job qualifications.

For some students this may mean making some choices about educational directions now, while there is time to change majors or degree programs. If you are serious about staying in the U.S. after graduation and using the H1-B visa pathway, be sure you are in a degree program that has job prospects in a professional field after graduation.

There is an annual “cap” or quota on the number of H1-B visas that are available

Under the current quota system, 65,000 H1-B visas are available for persons with bachelor’s degrees, and there are an additional 20,000 H1-B visas for persons with master’s degrees from U.S. universities. In recent years there have been more applications than available visas, resulting in some applicants being left out of the selection process because they filed their applications after the quota was exhausted. Knowing the filing schedule is one more critical piece of the H1-B puzzle.

H1-B visa applications are filed on a very specific annual schedule

Typically, the H-1B filing season opens on April 1, for visas for work beginning on October 1 the following fall. This filing schedule presents a number of logistical challenges, such as acquiring the necessary documentation in time, which become particularly important during years when there will be more applications than available visas. Timing your application to maximize your probability for consideration is critical.

Many graduates will be already working in Optional Practical Training programs when the H-1B filing season opens, and will need to pay close attention to the overlapping deadlines involved. Many graduates will be able to take advantage of the “Cap Gap” policy which allows graduates with OPT periods ending in May or June to continue working while their applications are pending, provided that they have properly filed before the expiration of their OPT period. Preparing a detailed timeline with your deadlines and milestones well in advance is a good practice.

Knowledge is powerful - learn more about the visa process if you are planning to stay

This is a very brief outline of the requirements for the H1-B visa, and there is more to learn if you chose to go forward with this option. You should not take the general information given here as legal advice, and you should seek out additional information and counsel as needed. Fortunately, information and assistance are available, but it will be up to you to the needed take actions in a timely fashion.

At MigrationCounsel.com we are committed to getting accurate information about the visa process to people who need it. We do this in a number of ways. We participate in school sponsored events and presentations, we have loaded our website with clear and accessible information, and we hold free monthly visa information sessions at locations around the Islands where we answer questions in an informal face-to-face setting. Check out our event schedule at www.migrationcounsel.com or give our office a call for a free consultation.

MigrationCounsel.com operates on a simple idea: if we concentrate on providing a very specific range of services, aggressively invest in information technology to continuously improve efficiency, and commit to effective information-sharing with our clients, we can deliver better legal services, reduce the uncertainty of the immigration process and bring top quality legal service into an affordable price framework.

Contact us:

MigrationCounsel.com

808 695 3560

jegan@migrationcounsel.com John Robert Egan, Senior Attorney

dtakeno@migrationcounsel.com Daryl Takeno, Associate Attorney

1833 Kalakaua Avenue, Suite 408, Honolulu, HI 96815