

**Sumner Immigration Law, PLLC** is full service law practice for all your business-oriented immigration needs. We are based in Richmond, Virginia but work with organizations throughout the United States and across the globe.

We guide you safely through the complexities of the US immigration and permanent residency processes if you are a

- ◆ Multinational corporation
- ◆ Individual entrepreneur
- ◆ Professional and academic, or
- ◆ University and research institution.

We serve clients from a wide spectrum of industries, including information technology, healthcare, universities and institutions of higher education, engineering, architecture, and financial services, as well as individuals and families.

**We execute innovative immigration strategies for achieving your business or personal goals.**

**We make a complex process simple – and successful – for you.**

The immigration process can be stressful and frustrating. Our goal is to take on that stress for you, and make your journey as pleasant – and as quick – as possible, so that you can accomplish your goals.



## Informational eBook

# H-1B Specialty Occupation Visa

The H-1B is a temporary visa classification available for professionals who serve in a “specialty occupation.” This eBook is a summary of the requirements and H-1B preparation process.

Courtesy of  
**Sumner Immigration Law, PLLC**

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## Plan Ahead! Form a Strategy for Your H-1B Filing

- Step 1: Qualification**
- Step 2: Sponsorship**
- Step 3: Wage level**
- Step 4: Employment authorization**
- Step 5: Immigration attorney**

### *Step 1: Make sure that you are qualified for the H-1B classification.*

The H-1B classification is available for foreign nationals who will perform services in a “specialty occupation” for a temporary period of time (up to six years in total). The definition of “specialty occupation” is quite complex, but basically, it refers to professional positions for which a bachelor’s degree in a specific field of study is the minimum requirement for entry into the profession.

The next question is whether you (the prospective employee) have the required degree. This degree does not have to be a US degree, and it is possible to use a combination of education and experience to meet this requirement. However, if the degree is from outside the US and/or if the employee is using a combination of education and experience, you will need to submit some additional documentation to show that the employee meets this requirement. Your attorney can assist you with this.

### *Step 2: Make sure that your employer is willing to sponsor you for H-1B status.*

While our office streamlines the process as much as possible for the employer and employee, the employer will have to sign paperwork, and will have to make certain attestations as part of the process (see [H-1B Frequently Asked Questions](#)).

While this is a topic that some employees are hesitant to bring up with their employers, it is critical to have a clear understanding of the employer’s willingness to sponsor so that you can make other plans if necessary. Many times an employee will work for the employer using OPT (optional practical training) for a while before being sponsored for H-1B status. This gives both the employer and employee a chance to make sure the relationship will work out for the long-run, and gives both of them more comfort in committing to the H-1B process.

### *Step 3: Make sure the employer is able and willing to pay the proffered wage or actual wage, whichever is higher.*

As part of the H-1B process, the attorney will prepare and file a labor condition application (LCA) on behalf of the employer. Once it is certified, the employer will sign the LCA, and by doing so is attesting that they are willing to pay a certain wage.

That wage is either the prevailing wage or the actual wage, whichever is higher. The prevailing wage is generally defined as the wage offered by other employers in the area of intended employment for the occupation within an equivalent level of preparedness. The actual wage is generally defined as the wage offered to similarly employed employees who are currently working for the employer. Your attorney will help you and your employer determine the required wage to be paid.

### *Step 4: Make sure the timing is right and that there is no gap in employment authorization.*

Did you know there is a limit of 65,000 H-1Bs every year, plus an additional 20,000 for US master’s degree holders? This is commonly referred to as the H-1B cap. This limit applies to new H-1Bs only. That means that H-1B transfers (from Employer A to Employer B) and extensions (extending your H-1B status) are not subject to the H-1B cap. Likewise, certain employers are exempt from the H-1B cap, such as institutions of higher education and certain research institutions.

However, most new H-1B petitions are subject to the H-1B cap, and it’s absolutely critical to time it right so that there is no gap in your work authorization. Here’s what you need to know:

- 1) The H-1B cap opens on April 1 of every year. That’s the first day that you can file a cap-subject H-1B petition.
- 2) Some years the H-1B cap is met over a period of several months, in which case it’s not critical that you file the H-1B petition on April 1 itself. However, in April 2013, the H-1B cap was met the first week of filing. In fact, so many petitions were received that USCIS conducted a lottery. The H-1B regulations allow for a lottery if USCIS receives more petitions during the first five business days of filing than there are H-1B slots available in the quota.

- 3) In 2013, a lottery was conducted for all US master's degree cases (remember, there is an allocation of 20,000 H-1B petitions for US master's degree holders). Then, there was a separate lottery for the remaining non-US master's degree cases. Any US master's degree cases not selected in that lottery were added to the "regular" cap case lottery. That means that the US master's degree cases were part of both lotteries, if it was not selected the first go round. The same process will take place any year that USCIS receives more petitions than there are slots available in the first five business days of filing. Therefore it is critically important that your case be filed on April 1 or at least within the first five business days of filing, for the greatest chance of success.
- 4) Even if your case is selected in the lottery (if there is one), and even if it is approved, you cannot start working in H-1B status until October 1.
- 5) **H-1B Cap Gap:** Many recent graduates are working in F-1 status on OPT or CPT when the H-1B petition is filed for them. However, often the students' OPT status ends before the H-1B status starts in October. What to do? Fortunately, the H-1B regulations allow for something commonly called the H-1B cap gap. This means that if the H-1B petition is timely filed, you request a change of status to H-1B which is requested to start October 1, and meet certain other requirements, you can keep working for your employer until the H-1B status starts on October 1, even if your OPT has expired. Keep in mind that the H-1B cap gap provision only applies to OPT; it does not apply to CPT. Therefore if you are working on CPT, you will need to make sure that your F-1 status is valid through at least the October start date. Your attorney can help you create a strategy for ensuring that there is no gap in your work authorization.

### *Step 5: Select an immigration attorney.*

Unless you are working for a very large employer who files a large number of immigration petitions and therefore has an in-house immigration legal team, your employer will use an immigration attorney to file the H-1B petition. If your employer has filed at least a few H-1B petitions before, they may have an established relationship with immigration attorney that they use for their filings. Otherwise they may let you (the employee) select an immigration attorney to work with.

## How Do I Get Started & What Happens Next?

**Step 6: Engagement Letter and Document Checklist**

**Step 7: H-1B Petition Filed!**

**Step 8: H-1B Petition Approved**

### *Step 6: Engagement Letter and Document Checklist.*

Each attorney will have a slightly different process for beginning a case and preparing the H-1B petition. The H-1B preparation process at Sumner Immigration Law is shown on the following page.

### *Step 7: H-1B Petition Filed!*

If the H-1B petition is a cap-subject H-1B, meaning it is a new H-1B subject to the H-1B cap, your petition should be filed on April 1, or at least within the first five business days of filing. That way, if there is an H-1B lottery (as described above), your case will be included in the lottery. Keep in mind, the lottery and H-1B cap do not apply to H-1B transfers or extensions.

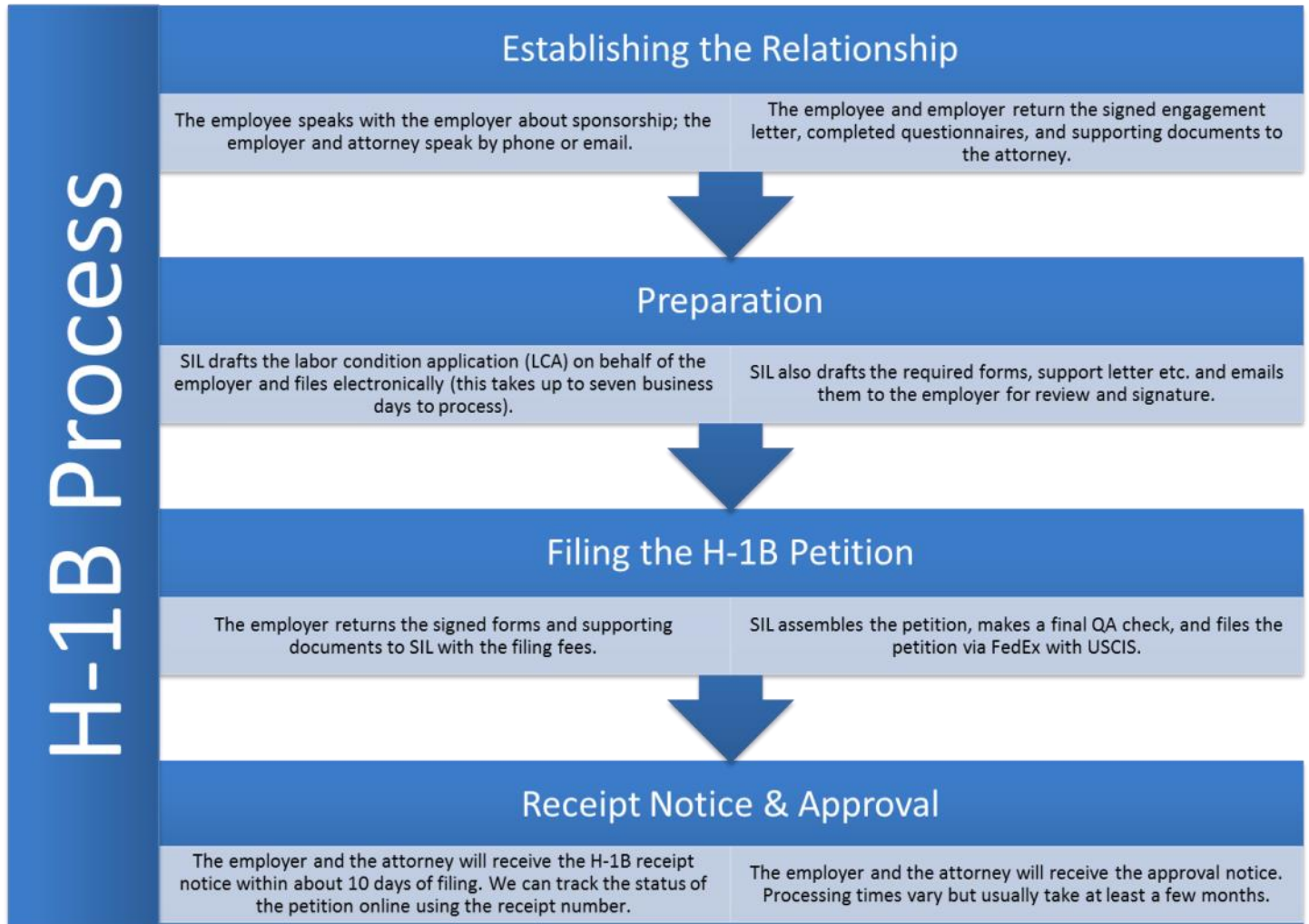
Your employer and your attorney will receive the H-1B receipt notice a few weeks after filing (sometimes this can be delayed if there is an H-1B lottery). The receipt notice will include the case's receipt number, which you can use to track the status of the case online. If USCIS requires additional information to process the case, they will send a request for evidence (RFE) to your attorney.

**Travel:** If you have filed the H-1B petition for a change of status (meaning a change from F-1, for example, to H-1B), please contact your attorney before you travel outside the US. If you travel while the change of status request is pending with USCIS, the change of status portion could be deemed abandoned. Therefore you will want to coordinate closely with your attorney to ensure that you can return as planned, and to ensure your petition is not affected.

### *Step 8: H-1B Petition Approved.*

Once USCIS has completed processing of your case, your employer and attorney will receive the approval notice (assuming it is approved). The attorney will receive the approval notice with the new I-94 card at the bottom. Be sure to take note of when the I-94 expires as your employer must file an H-1B extension petition before the expiration of your I-94 card.

## Sumner Immigration Law H-1B Process



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