Establishing an H-1B Visa for Postdocs

Initiating the H-1B Visa Process

- Department requests sponsorship for an H-1B Visa.

- Department and Postdoc consult with the Office of International Students & Scholars (OISS) via telephone, e-mail or in person, to ensure that H-1B is the appropriate visa option and that individual meets criteria.

- OISS determines whether University funds are available to pay for H-1B fees. If not, department finalizes with postdoc regarding fees/costs and who will pay what expenses. ***University must pay for $500.00 anti-fraud fee. Postdoc or Rice may pay for the following costs:***

    1. Legal Fee of $1500
    2. Filing Fee of $325 to USCIS
    3. Dependent H-4 filed with principal – Legal Fee of $250 and Filing fee for I-539 of $290 (one application covers spouse and all children under 21)
    4. Dependent H-4 filed alone - Legal Fee $500 and Filing fee for I-539 of $290 (one application covers spouse and all children under 21)
    5. Request for Premium Processing – Legal Fee of $250 and Filling Fee of $1225 *(this fee will not be paid by Rice Legal Funds)*
    6. Misc. expenses for courier, copies etc. of estimated $80

    Please note that effective Nov. 23, 2010, the filling fees for most petitions and applications increased.

- OISS sends "Approval to Initiate or Extend H-1B for Postdocs" form to department for completion and chair's signature.

- Department completes form and returns it to OISS along with a brief job description.

- OISS will forward a copy of approval form along with job description to Director of Recruitment. Failure to notify HR might delay H-1B process once it is ready to be signed by HR director.

- OISS contacts pre-approved immigration attorney's office and copies HR:
    1. Informs them of need to sponsor Postdoc for H-1B.
    2. Confirms arrangements of fee/payment agreement (who is paying what).
    3. Provides copy of approval form.

    NOTE: Utilization of firms that have not been pre-approved need to be cleared through the General Counsel's Office.

- HR forwards to sponsoring department the "Export Control I-129 Compliance Form". The hiring supervisor will fill out the form and sign it. The form should then be passed on to the department chair for review and signature and lastly to the dean for review and

signature. Any questions that arise in regards to filling out the form should be directed to the Office of Sponsored Research (Craig Conway or Sarah White).

- After the "Export Control I-129 Compliance Form" has been completely filled out and signed by all the appropriate parties, then it will be sent to OSR. OSR will complete the form based on how the form was answered by the department and sign it.

- OSR will pass the form back to Human Resources, as it is important to do so because the form attests to Part 6 of the I-129 form. HR will make a copy and will forward the form to the immigration attorney's office in order to complete the I-129 form. *****H-1B paperwork that will need to be submitted to United States Customs & Immigration Services (USCIS) will be on hold until the "Export Control I-129 Compliance Form" is returned to Human Resources.*****

(The following steps will run concurrently with previous 3 steps)

Preparing Documentation to Support Labor Condition Application (LCA)

- OISS advises Postdoc to contact immigration attorney.

- Postdoc contacts immigration attorney to discuss details of the H-1B process and cost. Immigration attorney has the Postdoc and department complete the employee information sheet and document checklist. Postdoc and department return information (including dept. chair signature) to attorney once completed.

- Once all information is received from OISS, department and postdoc, the immigration attorney will obtain "prevailing wage" for job from the Texas Worksource.

- Immigration attorney prepares and emails the *Initiated* Labor Condition Application (LCA) along with the *Notice of Filing* to Human Resources for review and approval. Included in the email will also be the obtained prevailing wage, which will be included in Public Access File.

- Upon HR review/approval, the *Notice of Filing* LCA posting is placed in 2 conspicuous locations for 10 business days and HR proceeds to email immigration attorney's office immediately after posting to confirm that the posting period has begun.

- At the same time, HR will compile the Public Access File for applicant. It is required that the Public Access File is initiated as soon as notices are posted.

- Included in Public Access File:

    - LCA Cover Pages
    - Initiated LCA (replaced by Certified LCA when available)
    - Wage rate, which is included in LCA
    - Description of Actual Wage System
    - Copy of prevailing wage and it's source
    - Notices of Filing LCA (2) – when 10 day posting period is completed
    - Summary of benefits

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Labor Condition Application Submitted to Department of Labor through iCert

- Once the immigration attorney's receive the email from HR, they proceed to certify the LCA electronically through the Dept. of Labor's iCert program, which according to DOL regulations may take 7-10 business days for an official decision to be made about the LCA.

- The immigration attorney's office will also finalize the H-1B petition packet and proceed to send it to HR for signatory review and signatures. ***The immigration attorney's office will hold off on sending the packet to Human Resources if the "Export Control I-129 Compliance Form" has not been returned. This will delay the processing time it takes to get the H-1B for the employee***

- HR will:
    1. Review, approve and return signed H-1B petition packet and support letter *(provided by immigration attorney's office via email)* to attorney's office for filing with United States Customs & Immigration Services (USCIS).

        - Packet includes: G-28 – Notice of Entry of Appearance as Attorney (3 pages), I-129 – Petition for a Nonimmigrant Worker (2), I-129 – H Supplement (2), I-129 – Data Collection Sheet (2), Statement of Support of H-1B Petition (2).

    2. Remove the LCA posting notices at appropriate time, sign the notices and add them to Public Access File.

- The attorney's office will file the LCA with USCIS attesting on behalf of the University that:
    1. H-1B employee will be paid at least the actual wage or "prevailing wage," whichever is higher.

    2. The employment of the H-1B individual will not adversely affect the working conditions for other workers similarly employed.

    3. That at the time of filing the LCA there are no layoffs, strikes, lockouts or work stoppages in the H-1B individual's occupation.

    4. A copy of the LCA will be posted for 10 business days in two places on the employer's premises.

Labor Condition Application is Certified

- Once the LCA is certified, immigration attorney's office will email it to HR. HR will print 4 copies, which are signed by Director of Recruitment. 2 copies are sent back to immigration attorney's office; 1 copy is placed in Public Access File and 1 copy is given to the Postdoc along with Acknowledgement of Receipt of LCA.

- It is required to give a signed hardcopy to the Postdoc no later than the 1st day of employment. Postdoc must also sign Receipt and return it to HR as record that LCA was provided.

Approval Notice & Final Steps

- United States Customs & Immigration Services (USCIS) issues "receipt of filing" to employer. *(If H-1B is portable, I-9 can be completed at this time and employment can begin).*

- About 2-5 months the Approval notice (I-797) is received (*2-5 weeks if it was premium processed)*. The attorney's office prepares the H-1B approval packet and sends it to HR. HR will get in contact with the employee/department to inform that approval packet is ready and can be picked up. *(If this is the initial H-1B for this person, I-9 can be completed at this time and employment can begin).*

- Postdoc updates appropriate records with new visa status (i.e. I-9 Forms, tax status, immigration database, etc.) to HR, Payroll and OISS.

Termination of Employment

- If Postdoc ends employment either voluntarily or involuntarily prior to H-1B visa end date (Receipt Notice End Date), department (or from fund if available) needs to pay $200.00 revocation fee in order to terminate Rice's payment obligations to the employee. Also, the $200.00 revocation needs to be paid if the employee changes visa status and the H-1B visa needs to be withdrawn.