



# FREAR LAW PLLC

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## STEPS IN THE H1b PROCESS(2019)

### I. STEP ONE: CONSIDERATION

The first step in determining if an H1b would be right for your organization is to evaluate the requirements. The H1b requirements include:

1. The foreign national will be filling a position that requires a specialty occupation.
  - a) "Specialty Occupation" requires the theoretical and practical application of highly specialized knowledge; and the attainment of a bachelor's or higher degree or equivalent work experience in the specific specialty for entry into the occupation
2. The foreign national is qualified for position that requires the specialty occupation
3. There is an available H1b visa
  - a) Lottery: most H1b petitions are subject to the cap that limits the number of new H1b visas to 65,000 per year with an additional 20,000 reserved for those with a master's degree
  - b) Timing of the Petition: since the lottery closes as soon as the cap is met(usually within 1 week), it is best to submit your petition on the first available date which falls on the first business day in April
4. The employer must make specific attestations on the Labor Condition Application
5. A valid employment relationship exists
6. There is no labor dispute in progress at the worksite of the occupation



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## II. STEP TWO: GATHERING THE DOCUMENTS

After you decide if the requirements can be met (with the help of your immigration lawyer) it is time to gather the required documentation. In order to file for the H1b, you will need the following:

- 1) A job description that includes the period of employment and job requirements
- 2) Copy of the foreign national's resume
- 3) Copies of the foreign national's educational transcripts
- 4) Copies of the foreign national's relevant employment experience
- 5) An end client letter (in some circumstances)
- 6) Basic overview of the company
- 7) Copy of biographical pages of the foreign national and any dependent spouse and children

## III. STEP THREE: THE PROCESS

- 1) **OBTAIN FEIN VERIFICATION:** The Federal Employer Identification Number (FEIN) must be verified with the Chicago National Processing Center (CNPC) unless the employer has done so previously. This verification may be completed via e-mail with a PDF document attached that enables the CNPC to confirm the FEIN
- 2) **OBTAIN PREVAILING WAGE DETERMINATION:** In order to fulfill the requirements of the labor condition application, employers are required to obtain a prevailing wage determination from the U.S. Department of Labor (DOL) Wage Library or a recognized industry wage source. The employer must pay the prevailing wage, or more. For planning purposes, it should be expected that the wage determination process will take a minimum of 30 days.
- 3) **LCA POSTING:** The employer is required to post a Draft Labor Condition Application (LCA) in at least two conspicuous locations at



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each place of employment where the H1b nonimmigrant will be employed. The LCA must remain posted for 10 days

- 4) LCA APPROVAL: After posting for 10 days, the employer/petitioner is required to then obtain a labor condition application (LCA) approval from the U.S. Department of Labor. The approval will establish that the job will satisfy prevailing working and salary conditions
  
- 5) SUBMIT H1B VISA PETITION--Submit visa petition, visa classification supplement, and LCA with evidence about the position to be filled to U.S. Citizenship and Immigration Services' (USCIS) regional adjudication center. The petition must be submitted with evidence that the position is a specialty occupation which oftentimes is shown by a letter from the employer. Additionally, evidence of the qualifications of the foreign national should be submitted.  
Most employers must pay a training filing fee of \$1,500 (reduced to \$750 for employers with 25 or fewer employees) for the first two petitions for an employer. All employers must pay a \$500 fraud reduction filing fee for the initial petition. The petition filing fee is \$460.
  
- 6) PROVIDE LCA TO EMPLOYEE—If the petition is selected in the lottery, the Employer provides the H1b employee with a copy of the Certified and signed LCA no later than the first day of employment at the new location

## IV. STEP FOUR: MAINTAIN A PUBLIC ACCESS FILE

The employer is required to maintain a file that must be made available for examination if requested by the federal government. The file should include:

- A copy of the LCA as filed;
- The returned and signed LCA;
- a copy of the prevailing wage determination;



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- The Employer's memo/documentation regarding the method, which formed the basis for determining the actual wage rate and the wage being paid to the H1b worker;
- Acknowledgement of posting of LCA OR a copy of the LCA together with information that it has been provided to the Collective Bargaining Representative, if applicable;
- Acknowledgement of receipt of a copy of the LCA by the H1b employee;
- A summary of the benefits to US workers in the same occupational classification as the H1b nonimmigrants.

As you can see, there are a number of steps to follow before you can obtain an H1b visa. This outline was designed to be brief and does not contain all of the information that needs to be considered before filing an H1b petition. For more information, please contact an immigration lawyer who will be able to give you specific legal advice that is tailored to your situation.