



ImLaw
Immigration
Attorneys

Filing for H-1B Work Visa Status

**Key
Terms:**

USCIS: United States
Citizenship and
Immigration Services

LCA: Labor Condition
Application

DOL: Department of Labor

PAF: Public Access File

RFE: Request for Evidence

For H-1B cap-subject cases:

Step 1 *1-2 weeks*
Gather Information

- Employer retains ImLaw for this project (review, sign, and return contract to ImLaw with payment of retainer fee).
- ImLaw opens new file and begins representation.
- Employer and Candidate each complete an H-1B questionnaire and submit requested documents to ImLaw.
- ImLaw reviews all submissions to confirm that offered position and candidate meet legal criteria for H-1B status.
- Certain employers are H-1B cap-exempt, meaning they can file H-1B petitions on any day of the year. Cap-exempt organizations generally include higher education institutions, nonprofit organizations affiliated with or related to higher education institutions, nonprofit research organizations, and governmental research organizations.

Employer creates a myUSCIS account in January or February of the applicable filing year. H-1B cap cases are subject to a competitive H-1B lottery each year.

Step 2 *1 week*
**Labor Condition
Application (LCA)**

- ImLaw evaluates H-1B position, determines correct occupational category, and ensures that offered salary meets the higher of DOL's prevailing wage requirements or employer's actual wage paid to workers holding the same position and possessing similar credentials to the H-1B candidate.
- ImLaw prepares LCA and submits to Dept. of Labor.
- ImLaw prepares Public Access File (PAF) documents and submits to employer with detailed instructions.
- Dept. of Labor processes application and issues a certified LCA in approximately 7 days.

An electronic H-1B registration must be submitted to USCIS within a designated period in March of the applicable filing year. USCIS will notify ImLaw of selected registration by March 31 of the applicable filing year.

Step 3
concurrently with Step 2
Prepare Documentation

- ImLaw prepares drafts of detailed H-1B letter in support, H-1B petition forms, and other supporting documents with instructions for signatures and fees.
- Employer reviews, signs, and returns prepared documentation to ImLaw by email or hard copy in the mail.

Upon notification of selection in the lottery ImLaw will work with clients to prepare H-1B cap application package.

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Step 4
2 weeks to
several months
Submit
Documentation
and Wait

- Employer provides required Dept. of Homeland Security fee checks and balance of fee to ImLaw per ImLaw's instructions.
- ImLaw assembles, reviews, and sends the final H-1B petition package to USCIS. Processing times fluctuate; it may be within several days to several months from date of filing. If filed using the premium processing service, USCIS will issue a decision within 15 days unless a Request for Evidence (RFE) is issued. If filed under regular processing, it may be a few to several months for decision.

Step 5 *Timing varies*
Employment
May Begin

- H-1B transfer candidates, those holding current H-1B status for another employer, may start work for the new employer immediately after receiving the I-797C receipt notice from USCIS. This can take a few weeks under regular processing and a few days under premium processing.
- For all other H-1B candidates, USCIS will notify ImLaw of the H-1B approval by issuing an I-797A (for candidates in the US) or I-797B (for candidates outside of the US) notice.
- ImLaw notifies and provides Employer with the approval notice and instructions for next steps.
- Thereafter, employment may begin on the start date of the approval.
- Employers can request a maximum of 3 years of H-1B status at a time for a total maximum of 6 years. Under law, there are two exceptions that allow an employer to file for H-1B extensions beyond the 6-year maximum, and they are both tied to initiating a green card process for the employee in question and reaching a certain point in that process.
 - **First exception:** if the first stage of the green card process (typically PERM labor certification but can also be an I-140 immigrant petition in certain cases) is filed at least 365 days before the 6-year limit is reached, employers can file for H-1B extensions in one-year increments until a final decision is issued in the green card application process.
 - **Second exception:** if an I-140 immigrant petition is filed and approved by USCIS before the 6-year limit is reached, and there are no available green card numbers for the employee's employment-based (EB) category, employers can file for H-1B extensions in three-year increments until a green card number becomes available.

For H-1B cap-subject cases:

ImLaw will assemble and file H-1B cap cases within the 90-day period beginning April 1 of the applicable registration year.

USCIS will issue approval notices with a start date no earlier than October 1 of the applicable registration year. USCIS will likely conduct a second and possible third round of H-1B selections later in the year based on unused H-1B registrations (i.e., employers not moving forward with filing an H-1B cap case based on a selected registration) or denials of H-1B applications based on the merits.