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The H-1B Visa for Specialty Occupation Workers

The H-1B visa allows U.S. employers to temporarily hire foreign workers into specialty occupation positions (i.e., those requiring specialized knowledge and a college degree). The H-1B visa is a *nonimmigrant* (i.e., temporary) visa; however, workers who enter the United States on H-1B visas may eventually become *lawful permanent residents* (LPRs) through the employment-based immigration system if they meet eligibility requirements.

The H-1B program epitomizes the tensions between the participation of U.S. employers in the global competition for talent and the potential adverse effects of their doing so on the U.S. workforce—issues of long-standing interest to Congress. Many observers consider H-1B and other foreign workers with college degrees a boon to U.S. global economic competitiveness and a key element of legislative options aimed at stimulating innovation and economic growth in the United States. These and other observers also have concerns over displacement of U.S. workers, program fraud and abuse, and the expansion of temporary worker programs and related backlogs for those seeking permanent status. Central to this policy debate is the challenge of facilitating the admission of foreign workers for U.S. employers with legitimate need without harming the labor market prospects, working conditions, and wages of U.S. workers and recent college graduates.

Background and Overview

The H-1B program traces its roots to the Immigration Act of 1990 (P.L. 101-649), in which Congress amended the Immigration and Nationality Act (INA) to provide for the admission of foreign nationals on H-1B visas to work temporarily in the United States if hired by a U.S. employer to perform work in a *specialty occupation*.

The INA defines “specialty occupation” as “an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” The majority of H-1B workers have been hired to work in science, technology, engineering, and math (STEM) fields, with about two-thirds employed in computer-related occupations.

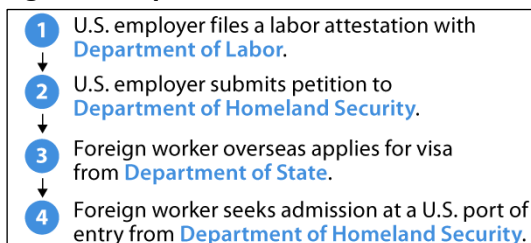
H-1B status is valid for up to three years and renewable for another three years. Certain workers with pending applications for employment-based LPR status can further extend their H-1B status.

The H-1B program is administered by the U.S. Department of Homeland Security’s (DHS’s) U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of Labor’s (DOL’s) Employment and Training Administration (ETA). DOL’s Wage and Hour Division (WHD) enforces the H-1B program’s wage and workplace requirements.

Admission Process

The process of hiring an H-1B worker involves multiple steps and multiple government agencies (see **Figure 1**).

Figure 1. Steps to Hire an H-1B Worker



Department of Labor

In a process known as *labor attestation*, prospective employers of H-1B workers submit a labor condition application (LCA) to DOL’s Office of Foreign Labor Certification (OFLC) stating the number of positions the employer is requesting, for what occupation and period of time they need the worker(s), and what wages they will pay. The LCA is a statement of intent rather than a documentation of actions taken. On the form, the employer must attest that (1) the firm will pay the H-1B worker the greater of the actual wages paid to similar employees or the prevailing wages for that occupation, (2) the firm will provide working conditions that do not cause the working conditions of the other employees to be adversely affected, (3) there is no applicable strike or lockout, and (4) notice of the filing of the LCA has been given to the bargaining representative or has been posted at the place of employment. There is no fee for submitting an LCA.

Department of Homeland Security

If DOL approves the LCA, prospective employers submit a petition to USCIS for a specific H-1B worker. The petition must include an LCA certified by DOL, evidence of the prospective employee’s qualifications (typically, at least a bachelor’s degree), and evidence that the position normally requires at least a bachelor’s degree. USCIS may approve the petition for a period of up to three years. If the prospective employee is present in the United States, the petition will include a request to change the employee’s status to H-1B or to extend the employee’s existing H-1B status. USCIS charges employers between \$960 and \$7,380 to file an initial H-1B petition depending on the size of the firm, its nonprofit status, and the number of H-1B workers it employs.

Department of State

If the prospective employee is outside the United States, he or she must apply for an H-1B visa at a U.S. consulate. A DOS consular officer determines whether the prospective employee is admissible (including whether they meet any of the *grounds of inadmissibility*) and eligible for the visa.

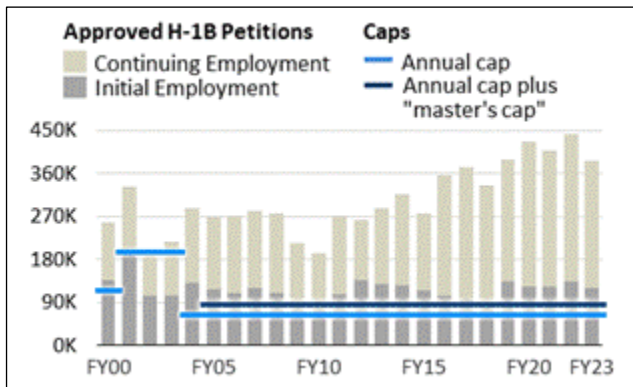
Department of Homeland Security

A visa provides permission to travel to the United States and apply for admission. DHS's Customs and Border Protection (CBP) officers at U.S. airports and other ports of entry determine whether visa holders are admissible.

The H-1B Cap, Exemptions, and Trends

Current law generally limits the number of individuals who are annually provided H-1B status to 65,000; however since FY2000 the majority of H-1B workers have been exempted from these limits (the *cap*) because they are extending their status or work for universities or nonprofit research or government research facilities that are exempt from the cap. In addition, up to 20,000 H-1B workers with a master's or higher degree from a U.S. university are exempted from the cap (known as the *master's cap*). While the annual cap of 65,000 is the same now as when it was established in 1990, Congress temporarily raised it for several years in the late 1990s and early 2000s. In FY2023, over 386,000 employer petitions for H-1B workers were approved, of which 69% were for continuing employment (see **Figure 2**).

Figure 2. Approved Employer Petitions for H-1B Workers, FY2000-FY2023



Source: CRS presentation of numeric data from USCIS, *Characteristics of H-1B Specialty Occupation Workers, FY2000-FY2023*.

USCIS's annual reports provide data on the characteristics of H-1B workers with approved petitions. In FY2023, 72% and 12% of approved H-1B petitions were for workers born in India and China, respectively. Seventy-one percent of approved petitions were for male workers. The median age for workers with approved petitions in FY2023 was 33. In FY2021 (the latest year with complete data on educational attainment), 34% had a bachelor's degree, 57% held a master's degree, 7% had a doctorate, and 3% had a professional degree (total exceeds 100% due to rounding).

Computer-related occupations accounted for 65% of approved petitions in FY2023, followed by architecture, engineering, and surveying occupations (10%) and education-related occupations (6%). The most common industry sector was professional, scientific, and technical services, which accounted for almost half (48%) of approved petitions. Median annual compensation for employees with approved H-1B petitions was \$118,000. About half of petitions approved for initial employment were for individuals changing from another status within the United States. Of these, 72% changed from F-1 (academic student) or F-2 (spouse or child of F-1) status.

The H-1B Lottery

Employer petitions for H-1B workers have routinely exceeded the annual cap. Since the mid-2000s, USCIS has used a lottery to select which petitions subject to the cap it will accept for adjudication. To streamline the process, USCIS implemented an electronic registration system in FY2021 to allow employers to enter the lottery by submitting basic information rather than a full petition. USCIS randomly selects from registrations an amount it projects will be needed to reach the cap. Employers with selected registrations are then eligible to submit petitions for those workers.

Policy Issues

Proponents of the H-1B program contend that it allows U.S. firms to hire specialized foreign workers to fill gaps in the labor market. They also point to competition with other nations over emerging technologies, arguing that U.S. economic and national security depend on recruiting and retaining the "best minds," including foreign students graduating from U.S. universities. Some argue that high demand for H-1B workers by U.S. employers demonstrates that there are not enough U.S. workers with specialized skills available. Some proponents also argue that the H-1B program should be reformed to make the hiring process less cumbersome and uncertain for U.S. employers.

Critics of the H-1B program often focus on its substantial utilization by labor outsourcing firms headquartered overseas to hire workers with ordinary skills. They argue that the program negatively impacts U.S. wages and working conditions and that there is little compelling evidence of specialized labor shortages. They contend that H-1B employees are subject to abuse and have been used to replace more expensive U.S. workers. Critics argue that the H-1B program should be reformed by strengthening enforcement mechanisms and requiring all H-1B employers to recruit U.S. workers first and pay H-1B workers higher wages. Some also argue that the H-1B allocation process should be revised so that preference is given to workers with the highest salary offers or educational attainment.

Over the years, many bills aimed at reforming the H-1B program have been introduced in Congress. These proposals typically aim to protect U.S. workers by requiring employers to do more to recruit U.S. workers, requiring higher wages for H-1B workers, prohibiting the replacement of U.S. workers with H-1B workers, limiting the proportion of a firm's employees who can be in H-1B status, expanding DHS's and/or DOL's authority to review and investigate H-1B fraud and abuse, increasing penalties for employers who violate program requirements, and/or prioritizing H-1B visas for workers with advanced degrees in STEM or with the highest salary offers rather than allocating these slots via lottery. Some bills would increase the H-1B cap, make it easier for H-1B workers and their families to obtain LPR status, or provide work authorization for certain H-1B spouses or children.

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