



FACT SHEET

Background

The Immigration and Nationality Act (INA) as amended by the Immigration Act of 1990 (IMMACT) created the H-1B nonimmigrant classification for temporary employment of foreign workers in the United States in specialty occupations or as fashion models. The H-1B provisions permit U.S. employers to employ foreign workers in specialty occupations that require theoretical or practical application of a body of highly specialized knowledge, including, but not limited to: scientists, engineers, or computer programmers. The law establishes certain standards to protect similarly employed U.S. workers from being adversely affected by the employment of the nonimmigrant workers, as well as to protect the H-1B workers.

This fact sheet contains information intended to assist agencies to verify the status of H-1B nonimmigrants. It also provides general background information about H-1B nonimmigrants, their authorized periods of stay, and how they can request extensions of their status.

Immigration Document Commonly Used by H-1B Nonimmigrants

H-1B nonimmigrants may present an unexpired foreign passport, a form I-94 or a printout of the form I-94, or in some cases, an I-797, demonstrating they have an application pending with USCIS to extend their authorized stay or change their status. When a benefit applicant has both a foreign passport and an I-94, SAVE recommends that agencies submit verification requests using the "I-94 in Foreign Passport" document type.

Period of Stay of H-1B Nonimmigrants

H-1B nonimmigrants may be admitted into the United States for an initial period of up to three years. This period may be extended for three more years for a total of six years, although certain exceptions may allow for longer periods of stay.

Immediate Family Members of H-1B Nonimmigrants

Spouses of H-1B nonimmigrants and their unmarried children under 21 years of age may seek admission to the United States in the H-4 nonimmigrant classification. H-4 status is generally granted for the same duration of authorized stay as the principal's H-1B status.

Extension of Stay for H-1B and H-4 Nonimmigrants

Federal regulations allow H-1B nonimmigrants to start working for a NEW employer under the portability rule and are entitled to a 240 day extension beginning on the date the H-1B status expires if an extension of stay petition is timely filed (on Form I-129). See 8 CFR § 274a.12(b)(20). For example, a person working for Company A, whose H-1B status expires on September 30, 2014, will be authorized to work for an additional period of up to 240 days, if Company A properly files an H-1B extension petition prior to September 30, 2014.

H-4 dependents are not included in the filing of the H-1B petition by the employer on the Form I-129, therefore a separate Form I-539, Application to Extend/Change Nonimmigrant Status, should be filed to extend the stay of all H-4 dependents of the H-1B nonimmigrant. An H-4 dependent can remain in the United States while the Form I-539 application is pending (provided the extension was filed timely). Furthermore, H-4 spouses are employment authorized. See 8 CFR § 274a.12(c)(26).

Verifying the Status of Nonimmigrants with Automatic Extensions

In the great majority of cases, an H-1B or H-4 will present a form I-94, foreign passport, or both when applying for a benefit or license. An H-4 spouse may present an EAD card with code C26. SAVE will typically respond with the class of admission; a statement that the applicant is a nonimmigrant or is work authorized, depending on the agency's benefit type; and the date until which the person is admitted into the United States.

For applicants with a pending petition to extend their H-1B nonimmigrant status, they should possess a Form I-797C demonstrating that there is a pending petition. In such cases if the applicant's admit-to date has passed, the SAVE system will return a response prompting the agency to institute additional verification. Under these circumstances, agencies should request that the applicant present the Form I-797C. If the agency wishes to verify that an applicant is still in status and has a pending H-1B extension petition, the agency should institute additional verification, include the Form I-797C receipt number in the comments field and request that it be verified. The agency should receive a response within 3–5 business days. Agencies should review their own laws and procedures to determine whether an extension of the benefit or license applied for should be granted.

Verifying the Status of H-1B Nonimmigrants Who Were Previously in a Different Immigration Status

When an H-1B specialty occupation worker has held a previous immigration status (for example, F-1 student status), and if the SAVE system responds with the previous status rather than the current H-1B status, the requesting agency should institute additional verification with SAVE. Furthermore, if SAVE requires a 3rd step verification, agencies should submit a copy of the applicant's Form I-797 (Approval Notice) of the current H-1B petition and any other current immigration documentation to SAVE.

For additional information about H-1B and H-4 nonimmigrants, please visit the USCIS Web site at <http://www.uscis.gov>. Agencies seeking information about verifying the status of these nonimmigrants may contact the SAVE Program at SAVE.HELP@dhs.gov or 1-888-464-4218.