

## WHAT IS AN H1B VISA?

The H1-B visa is available to individuals coming to the United States to perform services in a professional or specialty occupation for a particular employer.

*Does an employer have to prove that he tried to recruit an American worker before he hire an H1-B worker?*

This is a common misconception about the H1-B program. An employer does not have to prove that the company tried to recruit an American worker first.



This document is aimed at providing potential employers and employees with some basic information about the immigration process and is not a substitute for the advice of a legal professional. As with all areas of the law, immigration laws are subject to frequent change. The information presented here is based upon the experience of the Jaime Barron, P.C. legal staff and the most up-to-date published information available from the U.S. Citizenship and Immigration Service and other sources.

Jaime Barron P.C. is a fully staffed immigration and personal injury law firm with experienced staff and attorneys. All attorneys are licensed by the State Bar of Texas. For additional information about an H1B visa or how to obtain legal status through your employer, please contact our office and make an ap-



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## HOW DO I APPLY FOR AN H1B VISA?



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# What Do I Need to Apply for H1B?

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*What type of job can an employer fill with an H1-B worker?*

Many specialized professions qualify for the H-1B visa. These include computer analysts, architects, executive chefs, economists, financial or marketing analysts, psychotherapists, teachers, accountants, chemists, biologists, social workers, and physical therapists, to name just a few. The job may be in almost any field, but must require a university degree or the equivalent experience.

*What qualifications must the employee possess?*

The employee must have a university degree in an area related to the job you seek to fill, or the equivalent in experience. Generally, the CIS requires three years of related full-time work experience for each year of university education required for the job. The employee must also hold all U.S. federal, state and local licenses required for the occupation, although exceptions are made in limited instances for those working under the supervision of a licensed professional.

*How much does an Employer have to pay the employee?*

The employer must pay the foreign employee the “prevailing wage” for the profession in the geographic area, or the wage the employer pays others in similar positions – whichever is higher. An attorney will determine the prevailing wage either by accessing employment surveys available on-line or by requesting that the Department of Labor in your state indicate the prevailing wage for the job.

This process can normally be completed in a matter of hours or days.

*Can the employee travel?*

The H1-B employee can travel freely for business purposes or for vacation.

*Do sales positions qualify?*

A frequently asked question is whether sales positions qualify for this type of visa. While a position with sales responsibilities that justifiably requires a specific university degree or the equivalent may qualify, most sales positions do not – even if they require a license. For example, real estate salespersons are generally not eligible for H1-B visas. Moreover, any position that is dependent on commissions, and does not have a guaranteed salary which is equal to the “prevailing wage,” will not qualify.

*What documentation will I be required to submit?*

Normally, CIS requires the employer to submit only the following basic documents:

- 1) Job description;
- 2) Job offer letter to employee (describing job duties and why employee is qualified for the job);
- 3) Financial statement of company; and
- 4) Other documentation providing the CIS with background information about the company, if available (including brochures and newspaper or magazine articles).

*Can the employee's family come to the United States?*

The employee's spouse and unmarried children under the age of 21 can come to the United States with the employee. The spouse of an H-1B visa holder may not work, unless he or she finds an employer who is willing to petition for him or her separately. The employee's spouse and children can attend school while in the United States.

*For how long is an H1-B valid?*

An H-1B is initially valid for three years, with one possible extension of three more years.

