

Employing a Non-Immigrant as a Temporary Worker in H-1 B status. Q&A

- ✓ **The worker is overseas, and NJIT wants to employ this person for a period of one year, possibly longer, dependent on performance. What does the department need to do?**

First, ask, can we find a US citizen or permanent resident to do the job? This will avoid the need to bring a worker from overseas.

If the overseas worker is the person needed, contact the office of International Students & Faculty (OIS&F) at 140 East Building, by calling 973-596-2451 to request the **H-1B information**.

- ✓ **How long can an H-1B, temporary worker, be employed by NJIT?**

The maximum period is six (6) years. The maximum period that the U.S. Citizenship and Immigration Services (USCIS) **will grant at any one time** is three (3) years.

- ✓ **Can NJIT apply for one year?**

Yes.

- ✓ **What is the process?**

The department completes the required forms, obtained from OIS&F, and returns them to OIS&F. Please, **DO NOT** forward the forms to the Provost's office; the OIS&F will do this.

- ✓ **How long does it take for NJIT to do what is required before submitting the H-1B petition to USCIS, Vermont?**

Approximately one month.

- ✓ **Why does it take one month?**

Firstly, by law, the position which NJIT proposes filling with a non-immigrant **MUST** be posted internally at NJIT for ten (10) days in order to allow any person to register a concern.

Secondly, signatures are required on documents, and a completed Personnel Action Form (PAF) and a provost's "letter of invitation" are needed before the internal documentation is complete.

- ✓ **A department wants to employ a non-immigrant worker in H-1B status in January 2005. When should the process begin?**

June 2004.

- ✓ **If the non-immigrant worker is in the U.S. and holds a current H-1B status, can NJIT employ the person without petitioning the USCIS?**

No.

- ✓ **Why not?** H-1B status to work at NJIT requires approval by the USCIS for the person to work at NJIT in a **specific position**, for a **specific salary**. H-1B status approval at, for example, Harvard University, does not permit the person to work at NJIT, until NJIT has filed a petition to the USCIS for the person to work at NJIT.
- ✓ **How long does it take for the H-1B petition to be approved by USCIS?**
Two to four months from the time it is received by the USCIS, Vermont Service Center.
- ✓ **Can the approval processing time at USCIS be shortened?**
Yes. By paying a “Premium Processing Fee” of \$1000.
- ✓ **What is the Basic cost of filing the H-1B petition?**
\$175. This is the filing fee for the USCIS Form I-129. The check should be made payable to the “US Department of Homeland Security”.
- ✓ **Can the “Premium Processing Fee” be paid by the department?**
Yes. However, it CANNOT be a deduction from the salary the department has agreed to pay. This fee is in ADDITION to the salary amount.
- ✓ **Can H-1B status be extended?**
Yes, in increments to a period of six years, maximum
- ✓ **How is the extension done?**
A new complete petition has to be filed with the USCIS for each requested extension period.
- ✓ **Can the H-1B worker continue to work at NJIT, even though the approved period has expired, while the extension petition is being adjudicated?**
Yes.
- ✓ **Can an H-1B, non-immigrant worker be terminated by NJIT?**
Yes.
- ✓ **Is there any cost to NJIT by terminating an H-1B temporary worker?**
Yes. NJIT, upon petitioning the USCIS for the worker’s H-1B status, has agreed to pay transportation costs to the worker’s home country. Therefore, to terminate may cost an airfare to the non-immigrant’s home country
- ✓ **If NJIT petitions for H-1B status for a non-immigrant worker for three (3) years, is NJIT obliged to retain the worker for the whole period?**
No.
- ✓ **Does NJIT assist an H-1B temporary worker to obtain permanent residence in the US?**
The OIS&F will discuss the options for permanent residence with the H-1B, but will not offer legal advice on the process.