

APPLYING FOR AN H-1B (or H-4) VISA AND/OR RE-ENTERING THE U.S.

H-1B or H-4 Visa

If you will be leaving the U.S. and re-entering in H-1B status, you must normally have a valid H-1B visa. (If entering from Canada or Mexico after a visit of 30 days or less, you probably do not need a new visa. See below for details.) (Canadian citizens do not require visas, but should carry documents listed below to present upon entry to the U.S.)

We suggest that you make an appointment at a U.S. Consulate for a visa application before you leave the U.S. Procedures for visa appointments differ from country to country, but they can usually be made from the consulate's website.. To learn the procedures for making an appointment at the consulate you will use, go to <http://usembassy.state.gov/>. We suggest you arrange to have an appointment as early as possible after you arrive in the country. In some cases, there may be a delay of 4-6 weeks in issuing the visa, especially if the U.S. Consulate decides to do a background check.

On the consulate website, you will also find a list of items required, or suggested, for your H-1B application. Once again, note that requirements differ from country to country, so check the requirements for the consulate where you will apply for the visa. If you have a U.S. degree or if you have obtained an H-1B visa in the past, the consulate may not require all items listed. (Because of the high incidence of visa fraud with H-1B applications, some of the items listed may be intended to ensure that you actually have a university degree and a genuine job offer).

NOTE: If you have had an H-1B or H-4 visa in the past, you may now be able to get a new visa by mail. Consult the consulate website to see if this is possible.

Consulates may require some or most of the following items for a visa application:

- Photocopy of your I-797 approval of H-1B petition. **[IMPORTANT: The original of the entire I-797 forms is no longer required for visa applications, even if the U.S. Consulate website seems to say that it is. We have confirmed this with the Visa Office of the U.S. Department of State in Washington, DC] If possible, we do suggest that you take with you the original of the bottom portion of the I-797.**
- Copy of Labor Condition Application (ETA- 9035E) [You received this copy with the copy of your H-1B approval or receipt.]
- Copy of petition (Form I-129) filed by UT You also received this with copy of H-1B approval/receipt]
- Copy of your highest-level diploma [Also a certified translation and/or a degree evaluation from a credential evaluation service, if relevant and available]
- Recent letter from the UT department where you work, confirming the dates of your employment, and stating that your employment will continue after your return to the U.S.
- [Optional] Your most recent monthly Payroll statement from UT
- Copies of any previous U.S. immigration documents
- Confirmation that you have completed Form DS-160 on-line (on the consulate website)
- Photographs
- Proof of payment of visa application fee(s) [See consulate website for instructions]
- If you ever had J-1 status and obtained a waiver of the two-year residency requirement, show final I-612 approval obtained from INS/USCIS. If, instead, you spent two years in your home country after having J-1 status, provide some proof of this.

If you think that the consulate might require a background check, we also suggest that you have your UT supervisor write a letter describing your area of research or teaching, in some detail, but in terms that can be understood by someone outside your field.

If your **dependents** will be applying for **H-4 visas**, they will need the items listed above , plus a marriage certificate (for your spouse) or birth certificate (for your child). Dependents should show a photocopy of the I-797 approval of the **H-1B petition**.

Leaving the U.S.

As you probably know, when you leave the U.S., an airline representative will (should) take your I-94. If you received an updated I-94 as part of your I-797, you should keep the left-hand portion of the form (Marked "detach this half for personal records", and give the right-hand part to the airlines, along with your original I-94.

Arrival in the U.S.

If you are not arriving from Canada or Mexico (See below), you will receive a new I-94 when you arrive at the airport in the U.S. Be prepared to show any or all of the items listed above to the U.S. Immigration Officer. **Before you leave the officer, read your I-94 very carefully to make sure that you have been given H-1B status (or H-4 for a dependent) and that the I-94 is valid to the end of the approval period listed on the I-797.** If a different expiration date is written on the I-94, ask to have it corrected. A mistake on your I-94 can cause serious problems for you in the future. If you are unable to get the date corrected, consult an advisor in the UT Center for International Education immediately. [In some cases, the I-94 will be issued only until the expiration date of your passport. If this happens, get your passport extended as soon as possible and then see an advisor in CIE to discuss an H1-B extension.] (Passports should be valid for at least six months when you enter the U.S.)

If traveling to Canada or Mexico

If you travel to Canada or Mexico for less than 30 days, you may usually re-enter the U.S. without having a valid U.S. visa, even if your immigration status has changed since you last entered the U.S. This is known as "automatic visa revalidation". (This option is not available for citizens of Cuba, Iran, North Korea, Sudan, and Syria .) **This option is also not available if you have applied for a U.S. visa while in Canada/Mexico.** You must also be in legal status when you leave the U.S. and you must be returning to resume that same immigration status.

To use the automatic visa revalidation, it is **VERY** important to keep your I-94 when you leave the U.S. (CIE has a letter you can show to the airlines if you wish.) When you return to the U.S., you should show your passport, I-94, and copy of your I-797. We also recommend carrying all the items mentioned above, in case you are asked for them. You will not receive a new I-94. Note that some U.S. Immigration Officers may be unfamiliar with automatic visa revalidation procedures. You may refer them to U.S. Government regulations at 22 CFR 41.112(d). CIE can also provide a copy of these regulations if you wish to take them with you. In some cases, you may be referred to a higher level Immigration Officer, so we suggest you allow plenty of time for immigration processing.

Remember that automatic visa revalidation for persons in H-1B status is available after visits to Canada or Mexico **only**. If you visit any other country, a valid visa will be required for re-entry.

Frequently Asked Questions

Q: Will I have problems with my H-1B visa application?

A: The only problem experienced by most applicants is a delay, if a background check is conducted. Note that an applicant for an H-1B or H-4 visa does NOT have to show an intention to return to the home country. The H-1B/H-4 visa cannot be denied because the visa officer believes the applicant has applied for a "Green Card" or wishes to remain in the U.S. permanently.

Q: How can I know if a background check will be conducted?

A: Unfortunately, there is no way to know this for sure until you actually apply for the visa. Applicants in certain fields (considered sensitive) from certain countries will usually have a background check (known as a "Mantis Clearance") You might ask friends from your country who are in the same field if they had to wait for a background check.

Q: Can I do anything to speed up a background check or to get it started before I travel?

Q:

Unfortunately, it is not possible to initiate a background check before your visa interview. As stated above, if you think a Mantis Clearance may be required, we suggest that your supervisor write a letter describing your research and explaining how the results of this research is usually used. If you wish, you can take copies of some articles you have written to illustrate your research. In 2012, most clearances are completed in 2-4 weeks.

Q: Do I need to apply for the visa in my home country?

A: In most cases, you are NOT required to apply for the visa in your home country, but may apply at any U.S. Consulate. (It is not possible to get a U.S. visa in the U.S.). However, if you have ever been out of legal immigration status, you should consult a CIE advisor about applying in a third country. We also suggest that you contact the Consulate where you wish to apply (if not in your home country) to make sure they will accept your application; explain why you are visiting that country.

Q: Do you advise me to get my visa in Canada or Mexico before I go home?

A: If you will be going home, we usually do NOT advise you to apply for a visa in Canada or Mexico. It is usually easier and faster to process a visa application in your home country because the consulate there may already have issued you a visa and will be more familiar with your background. Remember: If you apply in Canada/Mexico, and they decide to initiate a background check, you will not be able to return to the U.S. until the visa is issued. Thus, you may be forced to remain there for a month or more. If you will be traveling to a third country and wish to get a U.S. visa before your trip, and if you are fairly confident that a background check will not be necessary, then it may be a good idea to get the visa in Canada/Mexico before you travel to another country.

Q: What if I have applied for Permanent Residence? Can I still get an H-1B visa?

A: Although Permanent Resident applicants may normally not apply for non-immigrant visas, it *is* possible to apply for an H-1B or H-4 visa if you have filed an I-485 or if an I-140 has been filed on your behalf. Leaving the U.S. or applying for the H-1/H-4 visa will not affect your Permanent Resident application. Carry with you a copy of the I-797(s) showing receipt or approval of the I-140 and/or receipt of I-485. If you prefer not to apply for the visa, and if you have filed an I-485, you may choose to re-enter the U.S. with Advance Parole instead of an H-1/H-4 visa. If you do this, it is unclear whether you are still in H-1B status when you come back. For this reason, we urge you to obtain work authorization (an EAD) before you travel. In recent years, many persons who re-entered the U.S. with Advance Parole have been able to extend or resume H-1B status after they return, but we cannot guarantee this.

NOTE: If your I-485 has been approved, you should not enter the U.S. with H-1B status. We suggest you check the status of your application on line before you travel. If your I-485 is approved while you are outside the U.S., tell the Immigration Officer at the Port of Entry so that you can be admitted as a Permanent Resident and not in H-1B status.

Q: Is an interview always required to get a visa?

A: Maybe not. Beginning in 2012, if you have had an H-1B or H-4 visa before, you may be able to get a new visa by mail. Consult the website of the U.S. Consulate where you will apply for the visa, or contact them by e-mail to inquire about this possibility.