

Dependents

Your spouse and any unmarried children under age 21 are eligible to be classified as H-4 dependents. An H-4 dependent may stay in the U.S. only as long as the H-1B maintains legal status. To maintain legal status, H-4s must maintain a valid passport and I-94 at all times and comply with the same reporting requirement as the H-1B for changes in personal information specified in this brochure under Maintaining Legal Status.

In addition, dependents in H-4 status are not eligible for employment in the U.S. but they may enroll in school on a part-time or full-time basis. Any H-4 dependents are responsible for extending their own status by filing form I-539. Once a dependent child reaches his or her 21st birthday, he/she is no longer considered a dependent and is no longer eligible for H-4 status.

Prior to a child's 21st birthday child, USCIS must receive the application to change the child's status from H-4 to another category (e.g. F-1) or the child must leave the US.



OFFICE OF INTERNATIONAL PROGRAMS INTERNATIONAL STUDENT & SCHOLAR SERVICES



H-1B SPECIALTY OCCUPATIONS & PERMANENT RESIDENCY

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H-1B Visa Information

The H-1B temporary worker visa allows foreign nationals to work in the United States in specialty occupations that require theoretical or technical expertise. The H-1B is the most common professional work visa in the US. The basic eligibility requires for an H1-B visa are:

- Demonstration of theoretical and practical proficiency of a highly specialized body of knowledge
- Possession of at least a Bachelor's degree or its equivalent, **and** a job offer in a position which requires a degree in a particular field of study
- Sponsorship by an employer

You may have heard of the H-1B quota which limits the total number of available H-1B visas to 85,000. Certain organizations (including universities) are exempt from this cap.

Maintaining H-1B Status

- Work only in the position for which your H-1B was approved. Your H-1B is both employer and job specific, which means that you may only work in the position for which you were hired for the employer listed on your I-797 approval notice. Your JMU-sponsored H-1B does not allow you to work for any other employer or in any other position at JMU or elsewhere without a new petition being filed.
- If you are asked to perform consulting work and/or lectures at other institutions or conferences, you may not accept honoraria or other compensation for those activities. However, you may be reimbursed for your actual expenses incurred (e.g. travel expenses).

Maintaining H-1B Status Continued

- Report any address changes, changes in immigration status, and legal changes to your name or names of your dependents to the ISSS office. You will also need to go to the USCIS website and complete the form AR-11 (<http://www.uscis.gov>).
- File a yearly tax return with the Internal Revenue Service (<http://www.irs.gov>).
- Extend your stay in a timely manner. More information about duration of H1-B visas can be found in this brochure.

Processing Times

An initial H-1B petition takes approximately two to five months to process unless premium processing is requested, in which case USCIS will review within 15 days as long as all necessary information is provided to make adjudication. Premium processing costs an additional \$1225. It is JMU's policy that the university will pay this fee if the department agrees that the need stems from the needs of the department. However, if the premium processing is needed for the employees benefit (e.g. to facilitate personal travel) then the fee must be paid entirely by the employee.

Fees

JMU will pay all filing fees for a normal H-1B petition. However, if premium processing is required, this may be the employee's responsibility depending on the situation (see Processing Times for full description). You will be responsible for filing fees associated with dependents seeking H-4 status.

Six-Year Maximum Length of Stay

H-1B visa holders are eligible for a maximum length of stay of 6 years. The six year limit includes any time spent in H-1B status with other employers. The initial application for an H-1B, a period of up to three years may be requested. After the initial three year period, it is possible to file an extension for up to three more years.

Exceptions to Six-Year Maximum Length of Stay

An extension beyond the six year maximum length of stay may be possible if a permanent residency petition has been pending for at least one year or if an I-140 petition has been approved but no quota number is available. It is also possible to recapture time spent outside of the US while in H-1B status.

Travel While in H-1B Status

You can enter the US no more than 10 days before your beginning employment date. If you are applying to change to H-1B status from another status, travel outside the United States will abandon your request to change to H-1B status. Traveling while an H-1B extension petition is pending does not abandon the extension petition. However, please contact the ISSS office of any travel planned after an extension has been filed. If the extension is approved while you are outside of the US, it will be necessary to mail you the new approval notice, since it will include a new I-94 card. The latest approval should always be used when entering the United States.

Travel While in H-1B Status Continued

Always travel with the following documents while in H-1B status:

- A passport that will be valid for at least 6 months into the future from the day you return.
- The most recent Form I-797 which shows your H-1B approval notice from JMU.
- A letter from your department that confirms your salary and employment dates; a copy of your contract is acceptable if it includes the dates of your current employment.

Applying for Permanent Residency from H-1B

It is imperative that you alert the ISSS office of your intention to pursue Permanent Residency as early as possible, and certainly within two years of the expiration of your H-1B status. The process of applying for permanent residency can take a long time and it is important that you plan ahead. There are also no guarantees that the petition will be successful. JMU will file the paperwork for tenure track or permanent teaching faculty, to secure a 2nd preference employment-based green card.**

Applying for Permanent Residency from H-1B Continued

- A separate I-485 is filed with the USCIS by the employee and each family member seeking permanent residence. This application can be submitted at the same time the I-140 is submitted. You will need to provide the ISSS office with the following information for you and your dependents:

- ⇒ 6 color passport-type photos
- ⇒ Birth certificate with English translation
- ⇒ Medical Exam: You must get a physical exam by an approved physician who is designated a “civil surgeon”. You can find approved doctors at: <http://1.usa.gov/15KNckn>
- ⇒ Passport and Immigration Documents
- ⇒ Marriage Certificate (if applicable)
- ⇒ U.S. Federal Tax returns for 2 years (employee only, if applicable)
- ⇒ Educational Documentation-transcripts, diploma of degrees earned and credential evaluation if necessary (employee only)

** Since there is a waiting list for some nationalities under the 2nd preference category (currently China and India), if employees from those countries wish to complete the paperwork for a first preference petition ISSS will cooperate with an attorney of the employee’s choosing. If that petition is approved, the employee will be eligible for an immediate green card. However, the employee will be fully responsible for the hiring and payment of an outside attorney, and ISSS will give no legal advice regarding the feasibility or probable outcome of a first preference petition.

Fees

Applying for permanent residency can be expensive. JMU will cover all but \$500 of the I-485 application. The employee is expected to contribute \$500 for themselves and pay the full filing fee for each dependent. The filing fee for a spouse and any dependent over the age of 14 is \$1225. All dependents under the age of 14 require a filing fee of \$750.

Maintaining Permanent Resident Status

You may be found to have abandoned your permanent resident status for several reasons, including:

- Move to another country intending to live there permanently
- Remain outside of the United States for more than 1 year without obtaining a reentry permit or returning resident visa. However, in determining whether your status has been abandoned, any length of absence from the United States may be considered, even if less than 1 year
- Remain outside of the United States for more than 2 years after issuance of a reentry permit without obtaining a returning resident visa. However, in determining whether your status has been abandoned any length of absence from the United States may be considered, even if less than 1 year
- Fail to file income tax returns while living outside of the United States for any period
- Declare yourself a “nonimmigrant” on your tax returns