This is a guide to obtaining H-1B status for employees of University of Wisconsin - Madison Departments and Centers. The hiring unit must complete the three step process for the H-1B petition as described in this packet. This information will assist employing units in completing the necessary paperwork to obtain H-1B status for its employees. It is in no way intended to be a "do it yourself" guide. U.S. government rules and regulations for H-1B classification may change at any time. All UW-Madison employing units should consult with International Faculty and Staff Services (IFSS) before initiating any H-1B petition. **It is of utmost importance to initiate the processing of H-1B petitions with IFSS with as much lead time as possible, allowing a minimum of five months.**

**Basic Information**

**Definition of H-1B:** H-1B visa classification may be granted to a foreign national who will perform services (work) in a "specialty occupation." See INA §101(a)(15)(H). A specialty occupation requires theoretical and practical application of a body of highly specialized knowledge to fully perform the required duties, and the attainment of a bachelor's or higher degree in the specific field as a minimum for entry into the occupation. H-1B status is for temporary workers. Although the position may be a permanent one, the individual must be filling it temporarily, meaning for a period of up to a maximum of six years, with limited exceptions. Tenure-track and tenured faculty may be accorded H-1B status.

**Please note:** Employment units who intend to apply for permanent residency status for its teaching faculty MUST file the Labor Certification (the first step of the permanent residency process) within 18 months of offering the position to the employee. This 18 month deadline applies even if the initial appointment was a visiting one. The date of the initial offer letter is the date the employee was offered the position, not the starting date of the appointment nor the date of any subsequent amendments to the initial offer.

**H-1B Criteria:** The employer petitions for the H-1B status on behalf of a potential (or continuing) international employee. The employer must show that there is a temporary job available in a specialty occupation, that the position will pay a salary at least equal to or greater than the "prevailing wage" in the field (See INA §212(p) and §§212(a)(5)(A), (N)(a)(A)(i)(II), (t)(1)(A)(i)(II) and 20 C.F.R. §§655.731(a)(2)(vii)), and that the individual has the credentials and skills for the occupation. At UW-Madison, faculty, academic staff, and employee-in-training positions which specify a degree in a particular field or fields and relevant experience in the field may qualify for the H-1B status. Very few classified positions qualify for H-1B status. The position description or the Office of State Employment Relations (OSER) job specifications must
list a bachelor's or higher degree and relevant experience as a requirement for the position. Honorary fellow, limited term employee, graduate assistant and student help positions do not qualify for the H-1B status.

**Other Considerations:** Statutes other than H-1B may be available to employ non-U.S. workers such as F-1 optional practical training, J-1 scholar, O-1 for renowned individuals, TN (Trade NAFTA) for Canadian/Mexican citizens, and E-3 for Australians. IFSS maintains information on its website on these other various employment based status. If the prospective employee is currently in the United States maintaining a legal nonimmigrant status (such as F-1 student, J-1, O-1, or H-1B for another employer), he/she may change status to H-1B or extend H-1B status to begin new employment without leaving the U.S.

**Current or Prior J Exchange Visitors:** An individual who is or was previously in J Exchange Visitor status (J-1 or J-2 dependent) may be subject to a requirement to spend two years in his home country before becoming eligible for H-1B or H-4 status. See 8 U.S.C. §1182(e); 8 C.F.R. §§248.2(c)(d). It is sometimes possible to obtain a waiver of this requirement, but it is the individual’s responsibility to obtain the waiver. IFSS must see a copy of all DS-2019 forms (formerly IAP-66) and J-1/J-2 visa stamps of anyone who has ever held J status before starting the processing of the H-1B petition in order to determine if the person is subject to the home residence requirement. If the individual is subject to this requirement, IFSS will not be able to process the H-1B petition without the waiver or evidence that the person has fulfilled the requirement by being physical present in his home country for two years. Obtaining a waiver can take several months to a year, so it is important to make this determination at the start of the H-1B process.

**Period of authorization:** See 8 C.F.R. §§214.2(h)(9), (13), (15). An individual may not spend more than six years in H-1B status, with two exceptions which are discussed in the next paragraph. See 8 C.F.R. §214.2(h)(13)(iii). The initial H-1B petition can be authorized for a period of up to three years. Extensions of stay may be authorized for subsequent periods of employment not to exceed the total six year limit. The six year limit does not apply to H-1B workers who engage in intermittent work of less than six months at a time, such as visiting faculty who come for just one semester at a time. See 8 C.F.R. § 214.2(h)(13)(v). Periods of time spent outside the U.S. do not count towards the six years. See *Matter of IT Ascent*, EAC-034-047-53189 (AAO Sept. 2, 2005). If an individual is not in the U.S., he does not have a United States immigration status. In order to recapture the time spent outside the U.S. from the six years, the H-1B must be able to document the absences to USCIS by airline tickets, rent receipts, stamps in the passport or any other similar documentation that can demonstrate that the person was outside the country.

Individuals who are in the process of applying for permanent residence may be able to extend their H-1B status beyond six years in two circumstances: (1) If either the Labor Certification or the I-140 has been pending for 365 days by the beginning of the sixth year, the H-1B status can be extended in one year increments. See AC21, PL 106-313 §106(a). (2) If the person has an approved I-140 and is from a country which has a backlog of immigrant visa number availability,
their H-1B status can be extended in three year increments. See AC 21, PL 106-313 §104(c).

H-1Bs may be employed by more than one employer at a time and/or may change from one employer to another, provided each employer has a valid I-797 approval notice for the worker. However, all employment, either full and/or part-time or with different employers, counts toward the six year limit. The six years is an aggregate. An employee does not get six years of H1-B status with the University and then another six years with another employer. It is very important to note that the approval of H-1B status for an individual to work with one employer is NOT VALID for any other employer. H-1Bs are employer and employee specific. This includes changing departments within UW-Madison, as each department is considered to be a separate employer.

H-1Bs who are employed by an academic institution are exempt from the 85,000 annual cap, but private employers are not. In most instances, if an H-1B leaves the University, he will be unable to begin employment for a cap-subject employer until the quota for the new federal fiscal year becomes available. The federal fiscal year begins on October 1.

**H-1B Portability:** Normally, an H-1B temporary worker cannot begin employment until USCIS has approved the employer’s petition. However, if the individual already holds H-1B status with another employer, employment may begin with the new employer as soon as the new employer receives the I-797 Receipt Notice from USCIS. See INA §§214(n)(1) and (n)(2)(A)--(C). For example, if an individual is currently an H-1B at Northwestern, and the University of Wisconsin–Madison wants to employ this individual, as soon as the UW files the H-1B petition and has the I-797 Receipt Notice from USCIS, indicating that USCIS has received the petition and has begun reviewing it, the individual can begin working for the UW so long as the start date on the UW’s petition has passed. An H-1B who changes from one UW department to another may NOT benefit from portability, nor may one for whom an amended petition for different employment in the same department has been filed.

**Specific terms of employment:** H-1B status permits an individual to work for a specific employer with specific terms of employment: title, salary, duties, and dates. If the Department or individual intends to change the terms of employment during the period of an H-1B approval, an "amended" H-1B petition may need to be filed and approved by USCIS before the change can occur. USCIS regulations require employers to file an amended H-1B petition when there has been a “material change in the terms and conditions of employment which affect the beneficiary’s eligibility for the H-1B classification.” See 8 C.F.R. §214.2(h)(11)(i)(A). Although USCIS does not define “material change,” policy memos have indicated that USCIS does not want to be advised of “minor, immaterial changes in the conditions of the alien’s employment which do not affect the alien’s eligibility for the classification.” After consultation with other major research universities, IFSS has established the following guidelines regarding when an amended H-1B petition may need to be filed by the University of Wisconsin-Madison.
Amended H-1B Petition Required
- different appointment
- change in major Department only if it results in a new appointment
- same appointment with:
  - significant change in job responsibilities
  - any decrease in salary
  - change in title to a different title series
  - change in work location

Amended H-1B Petition Not Required
- minor changes in job responsibilities
- routine promotion within the same position title series (from Assistant to Associate Scientist)

Amended H-1B Petition May or May Not Be Required—Consult with IFSS
- increase in salary
  - if salary increase is a result of merit or equity factors, no amended petition is required
  - if salary increase is a result of significant new duties or greater responsibilities, an amended petition is required

- change in major department but the beneficiary is working with the same principal investigator, has the same title, same salary, and same duties, no amended petition is required

Please complete the H-1B Amended Petition Determination form, found on the IFSS website, and submit it to IFSS. IFSS will inform the Department of whether an amended petition needs to be filed.

Foreign Medical Graduates (FMGs): Graduates of foreign medical schools may work in the U.S. in H-1B status only if they are invited by an educational or research institution to teach or conduct research. They may be involved in patient care unrelated to teaching or research only if they have passed parts 1 and 2 of the FLEX or parts 1, 2 and 3 of the USMLE or the NBME and have demonstrated competency in oral and written English by having passed the ECFMG English exam. No combination of the various medical exams is permitted. The FMG must have completed one full series of exams. This includes graduates of Canadian medical schools. They also must have a full and unrestricted license to practice medicine in a foreign country or have graduated from a medical school in a foreign country, and have Wisconsin medical license.

Procedures
All H-1B applications, amendments, and extensions require three steps (note separate sections within this packet for details on each step). In the case of extensions, if the LCA is still valid for the desired period of extension, only the third step is required. There is a five to six month processing time from the date the H-1B process is initiated with IFSS until the petition is
approved by USCIS. **Premium Processing** (see separate section) can speed up processing time by USCIS.

**STEP 1: Prevailing Wage Determination**
The US Department of Labor (DOL) must certify the "prevailing wage" in the field for the type of position. The international faculty/staff member must be paid at or above the DOL prevailing wage determination, or the actual wage within the department, whichever is higher.

**STEP 2: Labor Condition Application**
The Department of Labor (DOL) must certify a "Labor Condition Application" (LCA) submitted by UW-Madison. On the LCA, the University attests to the terms of employment and agrees to abide by the labor conditions listed on the LCA.

**STEP 3: USCIS Application**
USCIS must approve the H-1B petition. With the assistance from the hiring Department, IFSS files Form I-129 and supporting documents to sponsor the international faculty/staff member for H-1B status. The employing Department must show that the position is in a "specialty occupation," and that the individual possesses the necessary degree(s) and other credentials.

Because the Department, the employer, is the petitioner, the Department hiring authority must sign the legal forms for the DOL and USCIS. The hiring authority is considered an authorized representative of the employer (UW-Madison), thus the hiring authority is usually the Department chair or director. **The individual seeking H-1B status does not sign any forms for the H-1B process, nor may an outside attorney prepare them** (see page 1).

**Notification of Approval:** IFSS will receive the original H-1B Approval Notice (I-797A) from USCIS. IFSS will notify the Department.

If the international faculty/staff member is **within the United States**, IFSS will provide the original approval notice to him/her. **The individual may not begin legal employment until the petition has been approved by USCIS** except in portability cases, as explained above. In the case of H-1B extensions of the same position within UW-Madison, the individual may continue employment for up to 240 days after the expiration date of the previously authorized stay if an extension request was submitted to USCIS prior to the end of the previous H-1B period. See 8 C.F.R §274a.12(b)(20).

If the prospective employee is **not currently in the U.S.**, the Department should make arrangements to mail or express mail the original H-1B approval to the individual. **USCIS will directly notify the appropriate U.S. consular post of the approval of the petition (as was designated in the petition).** The H-1B Approval Notice should be used to apply for the H-1B visa stamp at the U.S. consular post abroad. As with any visa application, the decision to grant or deny an H-1B application is made by the consular official and there is no guarantee that the visa will be issued. In addition, mandatory background checks and personal interviews are creating significant delays in visa issuance at many consular offices. Individuals who receive the H-1B
visa stamp may enter the U.S. from a foreign country in H-1B classification up to 10 days before the begin date on the Approval Notice. See 8 C.F.R. §214.2(h)(13)(i)(A). **The individual should not enter the United States until he/she obtains the H-1B visa stamp in the passport.** Canadian citizens do not need a visa stamp, but do need the I-797 and I-94.

**Related information:**
Travel - The H-1B Approval Notice from USCIS will be needed to apply for an H-1B visa stamp at a U.S. consular post abroad if the individual travels outside of the U.S. IFSS has information on travel for international faculty and staff on its web site. As with any visa application, the decision to grant or deny an H-1B application is made by the consular official and there is no guarantee that the visa will be issued.

*Please note: If the H-1B applicant is currently in the U.S. and plans to travel outside the country during the processing of the H-1B application, IFSS should be notified of the travel plans at the beginning of the process. A departure from the U.S., even for a brief visit to contiguous territories such as Canada and Mexico, could cancel the petition or leave the applicant stranded outside the country for an extended period of time. See 8 C.F.R. §248.1(a) and (b).*

**Return transportation:** If the Department terminates the international faculty/staff member's employment for any reason prior to the end date specified on the H-1B Approval Notice, the Department is responsible for the reasonable cost of the individual’s return transportation to his/her home country or last permanent residence abroad. INA §214 (c)(5)(A), 8 U.S.C. §1184(c)(5)(A), 8 C.F.R. §214.2(h)(4)(iii)(E). The Department must give IFSS a copy of the termination letter. The Department does not have to pay the cost of return transportation for the employee’s dependent family members. Should the employee decide to voluntarily resign the position prior to the end date on the H-1B Approval Notice, IFSS should be provided with a copy of the resignation letter. The Department is not required to pay return transportation of any dependents or if the individual voluntarily resigns; however, IFSS still needs a copy of the resignation letter. Return transportation should be offered in writing, and if the employee declines the offer, that also should be in writing. Copies should be sent to IFSS.

Departments may want to take this into consideration when deciding the period of employment under H-1B status. If funding is certain and there is little question that the individual will be in the job for at least three years, it is a good idea to get the maximum initial period. However, if there is any question, a shorter initial period might be better.

**Dependent family members:** The dependent spouse and children (under 21) of an H-1B employee may apply for H-4 status. H-4 individuals are not authorized to work in the United States under any circumstances. If the dependents are already in the U.S. and they want to change to H4 status or extend their existing H4 status, they must complete the form I-539, submit it to IFSS along with the required supporting documents and the appropriate filing fees.
Tax issues: Individuals in H-1B status are subject to Social Security taxation. Unless considered a beneficiary of an income tax treaty between the United States and the home country, the individual in H-1B status is subject to U.S. income taxes. Beneficiaries of tax treaties are still required to file tax forms with the Internal Revenue Service (IRS). For complete information on taxation of internationals, contact Employee Compensation and Benefits.

If you have any questions, please contact:

Caution: This packet is designed for UW-Madison departments ONLY. These materials are specific to UW-Madison and should not be generalized to be applicable for any other employer. The use of these materials without further legal research and instructions may have serious legal implications for an individual and an employer.

h-1b process proc. 10/2010
Important Visa Information for H-1B

Check-List for Visa Application

1. Appointment with a US Consulate/Embassy nearest to your place of residence. Please be aware that it may take a few weeks to get an appointment. Allow additional time –two to three months if a background check is deemed necessary by the consular official.

2. Completed Visa Application Form, DS 160, DS-156, DS 157, and DS 158 (if applicable).

3. Original I-797 Approval Notice.


5. Updated letter of employment from your department (necessary for renewing H-1B visas).

6. Application fee. Please check the US Consulate/Embassy website for details.

Please check the US Consulate/Embassy website for any additional documents required by an individual consular post.

Link:  http://usembassy.state.gov/

Important Tips When Applying for an H-1B Visa

1. Please make sure that you have an appointment.

2. Be concise.

3. Know your job responsibilities and duties and how it fits in with your education. You should be prepared to explain this in one or two sentences.

4. Know where you are working-institution, address, lab, and your supervisor.

5. If dependents are accompanying you, please make sure that you have birth certificates of your children; have an original marriage certificate, photographs of your wedding, invitations, etc. as proof of evidence.

6. If the visa is denied or not issued, do not engage in an argument with the consular officer. Get a list of missing documents and/or a written explanation for the denial and contact IFSS as soon as possible.

If your name is sent for a background check, there is very little that we can do.
STEP 1: Prevailing Wage Determination and Actual Wage Review

Prevailing Wage Determination

Requirements: The University of Wisconsin – Madison Department must pay the international faculty or staff member the prevailing wage or the actual wage; whichever is higher. The prevailing wage is the weighted average salary paid to all persons equally employed in the area of intended employment. The University determines the prevailing wage based on the US Department of Labor’s Bureau of Labor Statistics annual data. The actual wage level is that wage paid by the employer to all other individuals with similar experience and qualifications as the H-1B nonimmigrant for the specific employment in question at the place of employment, i.e. the Department. The Department of Labor (DOL) can investigate complaints and review the documentation to ensure compliance with the wage requirements.

Department Procedures: In order to complete the process for determining the prevailing wage, the Department must:

- Type the information on the Prevailing Wage Request form (Please see the "Prevailing Wage Request Worksheet" for assistance on filling out the form.) **Remember to use the MINIMUM requirements to fill the position, not the individual’s qualifications.** Also, if the number of hours per week is less than 40 (100% time), it is extremely important that the H-1B work only that number of hours per week; otherwise the University could be subject to fines.

- Complete the Department Request Form (for New or Extension, as appropriate)

- Please ask the employee to complete the Beneficiary Information Form on the IFSS website at the beginning of the process.

- Submit to IFSS the Prevailing Wage Request form, Department Request Form, Beneficiary Information Form and, for new hires, copies of the position vacancy listing (PVL) or PVL waiver request, if required.

Processing Information: IFSS determines the Prevailing Wage based on its knowledge and experience in using the US Department of Labor, Bureau of Labor Statistics. The Department must pay 100% of the prevailing wage. In the event that the prevailing wage determination is higher than the offered salary, IFSS will contact the Department immediately. The Department has three choices:

1. Increase the salary level to 100% of the prevailing wage, **ONLY IF** it would not create inequities within UW-Madison, i.e. the proposed salary does not exceed the salaries of similarly qualified and titled employees within the Department. Increasing the salary level requires approval of the dean/director and APO.
Creating a new appointment rather than effecting a base adjustment for a continuing employee, or changing an appointment to less than 100% when the department expects 100% effort, are both inappropriate.

2. Resubmit the prevailing wage request to include market data and challenge the earlier determination.

3. Inform the international staff member that the Department cannot hire or continue to employ the individual in H-1B status at UW-Madison.

**Actual Wage Review**

Upon receipt of the prevailing wage request form, IFSS will provide the Department a chart listing the names and wages of all employees with a particular title in that Department. It is my understanding that the years of service on the chart may not be accurate because the years of service are based on this particular appointment and not overall years of experience. Because this chart includes all the employees with a particular title, the Department must determine the actual wage range of only the employees with similar experience and qualifications to the H-1B/E-3 employee. Another way to look at this is the Department needs to identify employees NOT comparable to the H-1B/E-3 employee and exclude their wages from the actual wage range. Ideally, the Department would only need to do the comparison chart once for each title (research associate, assistant scientist, associate scientist, assistant professor), then modify the chart as new H-1Bs with the same title are hired to reflect the changes in experience and education each person has.

In order to determine the actual wage range, the Department must list the names and reasons why a current employee is NOT comparable to the H-1B/E-3 on the Actual Wage Comparison Chart and attach it to the Actual Wage Determination and Certification Form. Departments will determine who is comparable to the H-1B/E-3 employee by asking the Principle Investigator (PI) or the Department Chair how they arrived at the proposed salary. The Department must be able to justify the salary based on experience and education. For example, the Department can look at the years of post degree experience the individual has, the publications and/or patents the individual has, etc. Information such as the resume or curriculum vitae should be reviewed, along with input from the Chair or PI. Below is a list of acceptable reasons stating why a current employee is not comparable to the H-1B/E-3. The DOL is conducting audits on thousands of employers so our salaries must not be arbitrarily assigned.

Once the non-comparable employees have been identified and their salaries eliminated from the actual wage range determination, the Department then lists the actual wage range on the Determination form. If the Department determines that all current employees are comparable to the H-1B/E-3, then all employees with similar experience and qualifications should be paid the same salary and there would be no actual wage range; just an actual salary. For most Departments, this is not the case. **In case of an audit, the employing Department must be able to justify the reasons employees with the same job title are NOT comparable to the H-1B or E-3**
employee and be able to justify the reasons why all employees ARE comparable if that is what the Department determined.

The Department is required by law to pay either the prevailing or the actual wage, whichever is higher.

**STEP 2: Labor Condition Application**

**Requirements:** The regulations from the Department of Labor (DOL) require the employer to submit a Labor Condition Application (LCA) to the DOL and comply with the requirements. The hiring authority who signs the LCA certifies the following under penalty of perjury:

1. the H-1B employee will be paid either the actual wage or the prevailing wage for the occupation, whichever is higher. The sponsoring Department will pay a similar wage to all employees with similar experience and qualifications;
2. employing the international faculty/staff member will not adversely affect the working conditions of similarly employed workers (i.e. same benefits, annual increases are provided to all employees, etc.); See 20 C.F.R §655.732 (b)
3. on the date of the application, there is not a strike, lockout or work stoppage; See 20 C.F.R §655.733(a)(1); and
4. the employer will post notice of the Labor Condition Application (LCA) in a conspicuous location for at least ten business days (or provide it to the collective bargaining representative, if applicable).

*If the employer is found to have willfully violated the Labor Condition Application requirements, the Department of Labor may penalize the sponsoring UW-Madison Department up to $ 1,000 per violation and assess back wages to the H-1B nonimmigrant. In extreme cases, there is the possibility of imprisonment and a bar against UW-Madison from obtaining H-1B status and permanent resident status for future employees for one year or more.*

**Department Procedures:** In order to complete the Labor Condition Application (LCA) process the Department must:

- Complete the LCA Authorization Form.
- Obtain the signature of the Chair and/or PI and send the original document to IFSS.
- After IFSS generates the LCA and the DOL certifies it, the Department must post a copy of the LCA per IFSS instructions and return the notice of posting the LCA to IFSS.

A copy of the certified LCA must be submitted to USCIS with the I-129 petition, fee, and documents as detailed in Step 3.
STEP 3: U.S. Citizenship and Immigration Services (USCIS) petition

Requirements
USCIS will determine whether the position is a "specialty occupation" and whether the individual meets the qualifications for H-1B status. USCIS will also review the person's current legal status (within the U.S.) or eligibility to enter the U.S. as an H-1B non-immigrant (if outside the U.S.).

The hiring authority (Department Chair) must sign in three areas on the Form I-129 which:

- Verifies the information is correct under penalty of perjury,
- Agrees to comply with the terms of the approved LCA during the entire period of the H-1B petition, and
- Agrees to pay for the reasonable cost of return transportation of the international faculty/staff member (but not the dependents) abroad if he/she is dismissed from employment for any reason before the H-1B status expires.

Department Procedures
Obtain the required supporting documents (listed below) and submit them along with the I-129 and filing fees to IFSS. USCIS requires two original applications be sent so please send one original set of pages 1-7, 11-12 and two original signature pages (pages 6, 7 and 12) and only one set of supporting documents.

Supporting Documents
- Completed Check List (New/Change of Status; Change of Employer/Concurrent; or Extension/Amended, as appropriate)
- Completed Department Request Form
- Completed Beneficiary Information Form
- current offer letter (title, salary, duties, dates specified)
- current resume/CV
- diploma/degree (and transcript if field not listed; translations if not in English, including Latin; and credentials evaluation-see below). Note that the degree must be in the specific field required for the position.
- publications (title page of one or two) or two reference letters, if no publications
- required license to practice the occupation (i.e. medical/veterinary clinical positions)
- if the individual is currently in the United States
  - copy of both sides of the I-94
  - copy of previous immigration documents showing the individual is in a legal status
  - copy of the information page of the passport
  - if currently an H-1B, all forms I-797
  - if currently F-1, all forms I-20, Employment Authorization Document (EAD) if optional practical training (OPT) granted
- if currently F-2, all forms I-20 of F-2
- if currently J-1, all forms DS-2019 (formerly IAP-66), waiver of 2 year home residence requirement (if subject), employment authorized by sponsor (i.e. J-1 student academic training)
- if currently J-2, all forms DS-2019 (formerly IAP-66) of J-2, EAD (if work authorization previously granted), waiver (if spouse is subject)
- if person is currently in H-1B status with another employer, payroll statements from the past three months
- if the individual is outside the U.S., the address of the individual and the address of U.S. consulate where the individual will apply for the visa. This information must be entered in part 4 of form I-129, and include copy of information page of passport.

For medical positions, a copy of Wisconsin medical license, unexpired ECFMG certificate, and proof of having passed one of the required exams (FLEX parts 1 and 2, or Parts 1, 2 and 3 of either the USMLE or the NBME).

Translations
All documents that are not in English, including Latin, must be translated. Translations must be accompanied by a statement from the translator indicating his/her qualifications for doing the translation. Neither the H-1B applicant nor an immediate family member may do the translation. The translator must sign the translation and type or write on the translation the following: “I certify that I am competent to translate (name of language) into English and this is an accurate translation of the original.”

Credentials Evaluations
USCIS has recently been requesting a credentials evaluation of the highest degree that was not obtained from a U.S. or Canadian college or university. Such requests delay the application, including those filed under Premium Processing. In order to avoid unwanted delays, we recommend that any applicant who has obtained his/her highest degree from an institution outside the U.S. or Canada obtain an official credentials evaluation. The National Association of Credentials Evaluation Services has a listing of their members at: http://www.naces.org/. It is up to the hiring Department and the individual to decide who should pay the fee for the evaluation. IFSS cannot recommend one firm over another.

Fees
The basic filing for the I-129 is $325 and must be paid by the employing Department.

The Fraud Prevention and Detection Fee of $500 applies to all initial H-1B applications. This fee must be paid by the employing department. This fee is in addition to the basic filing fee and applies to all individuals who are:

1. outside the U.S. and will apply for initial entry into the U.S. in H-1B status;
2. inside the U.S. in another status (such as J-1 or F-1) and are applying for a change of status to H-1B; and
3. inside the U.S. in H-1B status and are applying for employment with a new employer. This will not affect those who change from one Department to another within UW-Madison.

Each fee must be a separate check and all should be made out to U.S. Department of Homeland Security.

**Premium Processing**

Normal processing of H-1B petitions takes approximately four to five months. H-1B petitions can be expedited by paying a premium processing fee of $1,225 and must be paid by a separate check made payable to “U.S. Department of Homeland Security.” USCIS guarantees that they will adjudicate the petition within 15 calendar days of receiving the premium processing request. If they fail to do so, the fee will be fully refunded. Adjudication means that they will approve the petition, send a request for additional evidence, or deny it.

There is an additional form, I-907, for premium processing which must be submitted to USCIS. The Department should complete Parts 2 and 3 of the form and submit it to IFSS. IFSS will complete the rest of the form and file it in accordance with USCIS instructions. The Premium Processing fee of $1225 **must be paid by the employing department.** IFSS can submit the premium processing request with the I-129 or it can upgrade the processing of the I-129 to premium at a later date by sending the I-907, the appropriate fee and a copy of the Receipt Notice to USCIS.

When a timely application for extension of stay is filed for a person in H-1B status with no changes in the terms and conditions of employment, the H-1B may continue working for up to 240 days after the expiration date of the original H-1B while USCIS adjudicates the extension of the status. See 8 C.F.R §274a.12(b)(20). Therefore, premium processing is NOT necessary for a straight extension with no changes. Premium processing also is not necessary for a portability case, as the beneficiary may begin employment as soon as we have the Receipt Notice from USCIS for the I-129.

**Dependents**

The spouse and unmarried children under age 21 of an individual on an H-1B visa may apply for an "H-4 dependent" visa. Family members in the U.S. who wish to change to H-4 status from another status or to extend their current H-4 status, must complete a US Citizenship and Immigration Services (USCIS) Form I-539. **The family member completes and signs the I-539 application, NOT the H-1B visa holder.** If the family member is a young child who is not old enough to sign, the parent may sign the form in Part 6 "Signature of person preparing form if other than above."

A foreign address **must** be given in Part 4. The address of a parent or other family member living in the home country is acceptable.
Fee: The fee for processing is $290 payable to US Department of Homeland Security and must be paid by the beneficiary, not the Department.

Return the completed and signed I-539 to IFSS, 21 N. Park Street, Suite 5101, with the H-1B petition packet. Additional supporting documents are need. The supporting documents include a photocopy of I-94 of the spouse and/or child(ren), and if they are currently in a status other than H-4, a photocopy of their other USCIS documents indicating their current status. If they are currently in H-4 status, they may also have a form I-797, Approval Notice, in which case, a copy of that form should also be provided. Proof of relationship to the principal H-1B in the form of birth and marriage certificates must also be included, as well as a copy of the information page of the passport.

Family members who have a valid status independent of the H-1B visa holder (e.g. F-1, J-1), are not required to file for H-4 status. **H-4 visa holders are not authorized to work in the United States under any circumstances.**

**For family members outside the U.S.:** The I-539 Form is not needed if the family members are currently not in the United States. Instead, they will complete a visa application for H-4 status directly to the U.S. Consulate or embassy. The following offers guidelines on what may be required. However, each Consulate may have different fees, procedures and requirements and should be contacted prior to making the application.

1. **Proof of the H-1B’s status in the U.S.** Original form I-797 Notice of Approval.

2. **Proof of financial support**
   - A letter from the H-1B’s department indicating annual salary;
   - A letter from the H-1B indicating that he/she will provide support for the dependents;
   - Copies of the H-1B’s bank statements.

3. **Proof of relationship**
   - Copies of marriage and/or birth certificates.

Other family members such as parents, sisters, brothers, domestic partners are not eligible for H-4 status. They may be able to apply for a "B-2 tourist" visa. They would need to show proof of financial support and ties to their home country.

**Final notes about the I-129:**
- When submitting documents and forms to IFSS, please do not staple anything.
- Make sure all signatures are in blue ink, or some color other than black. USCIS rejects forms signed in black ink. They will return the petition to us unadjudicated.
- When copying the I-94, visa, and/or passport information page, please make sure the background is white not black.
- Page 9 of I-129 Form requires the Department Chair to sign in the following two places
“Petitioner’s Signature” and “Signature of Authorized Official of Employer.”

**Processing Information:** IFSS will review and mail the petition, include a copy of the approved Labor Condition Application (step 2), H-1B Data Collection form, supporting documents, and fee to USCIS. If the H-1B classification is approved, an Approval Notice (form I-797) will be sent to IFSS and it will indicate the dates of the work authorization. IFSS will notify the Department of the approval. The individual or Department representative must pick up the original H-1B Approval Notice at 21 N. Park Street, Suite 5101 anytime between 7:45 a.m. and 4:30 p.m.

**When H-1B Employment is Terminated:** If the Department terminates the international faculty/staff member's employment prior to the end date specified on the H-1B Approval Notice for any reason, the Department is responsible for the reasonable cost of the individual's return transportation to his/her home country or last permanent residence abroad. The Department is not required to pay return transportation of any dependents or if the individual voluntarily resigns. Should an early termination occur, for whatever reason, **IFSS should be notified immediately, and provided with a copy of the termination letter.** The Department could be held responsible for back wages and fines if USCIS is not notified of an early termination. (See Departure Form)

H-1B packet 2012/04