



## SYRACUSE UNIVERSITY

LILLIAN AND EMANUEL SLUTZKER CENTER FOR INTERNATIONAL SERVICES  
DIVISION OF STUDENT AFFAIRS

### LIFE AFTER PRACTICAL TRAINING

Many students, after completing their program of study and available practical training, wish to remain in the United States to pursue or continue employment. The most widely used non-immigrant classifications for employment in the United States are H-1B (open to all foreign nationals) or TN (for Canadians or Mexicans only) status. These classifications are employer-dependent, that is, they require an offer of qualifying employment and valid status is dependent upon continued employment.

The information below is an overview of these classifications. This information is not legal advice. Each individual should carefully consider their own circumstances and consult an immigration attorney with any questions.

#### *Understanding the H-1B:*

**Who:** Foreign Nationals with a bachelor's degree or higher

**Where:** Obtain change of status (COS) in the US; obtain H1B visa at a US consulate abroad

**When:** Once employment is offered/accepted; can take 3 to 6 months to obtain approval.

For private industry H1B start date is October 1 – filing date is on or after April 1.

**How Long:** Initial period of 3 years; extension for an additional 3 years (total of 6 years)

#### **Requirements:**

- Employment is in a “specialty occupation” (requires application of highly specialized knowledge and at least a bachelor's degree);
- Foreign national must meet the minimum qualifications for the position;
- Employer must meet or exceed prevailing wage as determined by Dept of Labor;
- May have dual intent (path to permanent residency)

The H-1B is available to foreign nationals offered employment in a position that requires at least a Bachelor's degree. The H1B petition is completed by the employer. The foreign national is the beneficiary of the petition. The employer and beneficiary usually work together to gather the necessary evidence that the position is one for which an H1B is available and that the beneficiary has the requisite education and skills for the position. H1B status is granted for an initial period of up to three years, renewable for an additional three years. The beneficiary need not have temporary intent; dual intent is recognized for individuals in H-1B status. Dependents may accompany the principal to the US, but will not be eligible for employment authorization. Obtaining approval for H-1B status can take between 3 to 6 months.



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Premium Processing is an expedited handling of H-1B applications that a petitioner may request for an additional fee of \$1000. The application will be adjudicated within 15 business days.

H-1B Cap: Each governmental fiscal year (October 1 - October 1), 65,000 H-1B visa numbers become available nation-wide. An additional 20,000 H1B visa numbers are available for individuals with a master's degree or higher. Institutions of higher education, nonprofit organizations, and government research organizations are not subject to this numerical cap. The earliest an H-1B petition may be filed is six months prior to the start date of employment.

Fees: The filing fee for an H-1B petition is currently \$320. Employers are also required to pay an additional \$500 "fraud prevention and detection fee" for initial H1B petitions. Private companies (with some exceptions) must also pay a training fee of \$1500 (\$750 for small businesses). However, institutions of higher education, affiliated non-profits, and government research organizations are exempt from the training fee.

Prevailing Wage: Employers must first satisfy Department of Labor wage standards BEFORE petitioning for H-1B status. The employer must meet or exceed the "prevailing wage" as determined by the Department of Labor for the position for which the H1B is sought.

Attorney's fees: You should also anticipate that you may be responsible, or partially responsible, for attorney's fees connected to the filing of the H-1B petition. This will depend on the employer, your salary and other arrangements.

### *Understanding the TN Visa:*

**Who:** Citizens of Canada and Mexico

**Where:** Obtain TN status at the border (Mexican citizens must first obtain a TN visa from US consulate)

**When:** Once employment is offered/accepted.

**How Long:** TN status is available for one year increments, renewable indefinitely

**Requirements:**

- Canadian or Mexican citizenship;
- Job offer in particular field itemized in appendix to NAFTA;
- Qualified for position; and



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- Temporary intent

TN status is only available to citizens of Canada and Mexico for particular fields or occupations found in the appendix of the North American Free Trade Agreement (NAFTA). TN status is granted in one year increments, renewable indefinitely. A TN applicant must establish that the job is one for which TN status is available, that he/she is qualified for the position and that he/she has “nonimmigrant” or temporary intent. Dependents may accompany the principal to the United States, but will not be eligible for employment authorization.

The TN is attractive because it is relatively easy to obtain. For Canadians, the application is made at the port of entry in Canada, and the status is granted or denied in an immediate adjudication by an Immigration official. No visa is required for Canadians in TN status.<sup>1</sup>

Because a TN requires proof of temporary intent, it may be difficult to file for permanent residency while in TN status.

There are other somewhat limited options for employment in the United States, however citizenship in a particular country is required for some. For example, citizens of Australia may be eligible for an E-3 visa, citizens of Chile and Singapore may be eligible for an H1B1. Other options include the O-1 visa (requires meeting the “person of extraordinary ability” standard) and L-1 (intracompany transferee).

### ***Understanding Permanent Residency:***

There are several ways in which individuals may pursue Lawful Permanent Residency, also referred to as the “green card.” Most options involve two or more applications over a period of one to three years, with no guarantee of success. The most popular routes to permanent residency are the diversity lottery, family based petitions, or employment based petitions.

A common route to permanent residency in the employment context is the labor certification process for individuals in H-1B status. This process requires an employer willing to sponsor the foreign national employee and, in most cases, requires filing an application with the Department of Labor, which demonstrates that there is a position for which there is no minimally qualified United States worker available.<sup>2</sup> Rarely, an

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<sup>1</sup> Mexican nationals seeking TN status are required to first apply for a TN visa at a US Consulate.

<sup>2</sup> There are some positions, such as University professors, which do not require the employer to show the unavailability of US workers.



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applicant can bypass the Department of Labor altogether (where the individual can establish extraordinary ability) and file only with the United States Citizenship and Immigration Services.

### ***Understanding Immigration:***

The process to obtain and change status in the United States involves a complex and constantly changing set of laws and regulations. The petitions and applications are most commonly pursued with the United States Citizenship and Immigration Services/ Department of Homeland Security, and the Department of Labor. It is important that individuals who are considering filing any documentation with respect to immigration obtain as much information as possible on the procedures and consequences of filing. **It is recommended that you consult with a qualified immigration attorney prior to pursuing benefits under US immigration laws.**

*\*\*The Slutzker Center is available to offer guidance and answer basic questions during your time as a student. Slutzker Center staff are not attorneys and should not be considered your legal representative \*\**

Helpful websites:

<a href="http://www.travel.state.gov">www.travel.state.gov</a>	Consulate and Embassy Information, nonimmigrant visa processes abroad.
<a href="http://www.aila.org">www.aila.org</a>	American Immigration Lawyers Association
<a href="http://www.visalaw.com">www.visalaw.com</a>	Immigration Bulletin
<a href="http://www.uscis.gov">www.uscis.gov</a>	U.S. Citizenship and Immigration Services (forms, fees, and processing times)
<a href="http://www.flcdatcenter.com">www.flcdatcenter.com</a>	Department of Labor. Wage Library to determine the “prevailing wage” for a particular job in a particular area.



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### **Traveling to Obtain H Visa Stamp**

You must bring the following documents with you:

1. A copy of your full H-1B petition. SCIS will provide a copy at your request.
2. Copies of your 2-3 most recent paystubs
3. Your original diploma (at the level which allows you to qualify for your position)

You should check the website of the US Consulate you will be visiting for your visa appointment. You can locate the embassy at <http://usembassy.state.gov/>. Some consulates have their own unique documentation requirements for H1B visas.

The fee for obtaining a visa at a US Consulate is \$131.

Please remember that the maximum time for an H1B visa stamp is the duration of H1B status as evidenced by your H1B approval notice (some foreign nationals receive a visa for less than the period of H1B status). You *may* travel while an H1B extension is pending IF: (1) you have a valid visa stamp in passport already and will return before the expiration date OR (2) you have a current H approval notice that is good into a future date – apply for a new H visa at a U.S. consulate using this approval notice (even while an extension is pending).

**Canada** – excellent option. Visa processing may take 4-7 days. Employee needs to make visa apptmt ahead of time (at least 4-6 weeks).