

H-1B Data Collection and Filing Fee Exemption

Purpose of This Form.

On October 21, 1998, Congress enacted the American Competitiveness and Workforce Improvement Act ("ACWIA"), Public Law 105-277, that modified the H-1B nonimmigrant program. This form is an addendum to Form I-129, Petition for a Nonimmigrant Worker. This form will be used to collect additional information about the H-1B nonimmigrant worker and the H-1B petitioner (U.S. employer). This addendum will also be used to determine whether the H-1B petitioner is exempt from the additional filing fee of \$1,000 imposed by ACWIA.

Who is Required to File.

A United States employer seeking to classify an alien as an H-1B nonimmigrant worker must file this form concurrently with Form I-129 and the appropriate fee.

Payment of the Fee.

A United States employer filing an H-1B petition must submit the \$130.00 filing fee and, unless exempt under Part B of this form, the additional \$1,000 fee. Payment may be in the form of a single check for \$1,130.00 or it may be submitted as two checks, one for \$130.00 and one for \$1,000, filed at the same time.

General Filing Instructions.

Part A.

All United States employers seeking to classify an alien as an H-1B nonimmigrant worker must complete Part A of this form. An employer must answer all of the questions in the "Employer Information" Section.

- *H - 1B Dependent employer.* An "H - 1B dependent employer" means an employer that:
 - a. Has 25 or fewer full-time equivalent employees who are employed in the United States and employs more than 7 H-1B nonimmigrants;
 - b. Has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States and employs more than 12 H -1B nonimmigrants; or
 - c. Has at least 51 full-time equivalent employees who are employed in the United States and employs H - 1B nonimmigrants in a number that is equal to at least 15% of the number of such full-time equivalent employees.
- *Willful Violators.* A willful violator is an employer whom the Secretary of Labor has found, after notice and opportunity for a hearing, to have willfully failed to meet a condition of the labor condition application described in section 212 (n) of the Immigration and Nationality Act.
- *Exempt H - 1B nonimmigrant.* An "exempt H - 1B nonimmigrant" means an H- 1B who:
 - a. Receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least \$60,000; or
 - b. Has attained a master's degree or higher (or its equivalent) in a specialty related to the intended employment.
- *Highest educational level.* Place an "x" in the appropriate box (*a through i*) that is most closely related to the highest formal education level attained by the beneficiary. DO NOT consider work experience in determining the beneficiary's equivalency
- *Major/Primary field of study.* Use the beneficiary's degree transcripts to determine the primary field of study. Once the beneficiary's major is determined, fill in the boxes with one character per box. Thirty (30) characters maximum. DO NOT consider work experience to determine the beneficiary's major education level.
- *Rate of pay per year.* The "rate of pay" is the salary or wages paid to the beneficiary. Salary or wages must be expressed in an annual full-time amount and do not include non-cash compensation or benefits. For example, an H-1B worker is to be paid \$6,500 per month for a 4-month period including a health benefits package and transportation. The yearly rate of pay if he or she were working for a full year would be 12 times the monthly rate or \$78,000. This amount does not include health benefits or transportation costs. The figure \$78,000 should be entered on this form as the rate of pay.
- *LCA Code.* The LCA Code is a three-digit occupational group for professional, technical, and managerial occupations and fashion models that can be obtained from Appendix 2 of the Dictionary of Occupational Titles printed on Department of Labor ETA Form 9035, Labor Condition Application for H-1B Nonimmigrant.

- **NAICS Code.** The North American Industry Classification System (NAICS) code can be obtained from the Department of Commerce, U.S. Census Bureau (www.census.gov/epcd/www/naics.html). Enter the code from left to right, one digit in each of the six boxes. If you use a code which is less than six digits, enter the code left to right and then add zeros in the remaining unoccupied boxes.

The code sequence 33466 would be entered as:

3	3	4	6	6	0
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The code sequence 5133 would be entered as:

5	1	3	3	0	0
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Part B.

A U.S. employer seeking an exemption from the \$1,000 filing fee must complete Part B. A U.S. employer is exempt from payment of the additional \$1,000 filing fee if:

- The employer is an *institution of higher education* as defined in the Higher Education Act of 1965, section 101 (a), 20 U.S.C. section 1001 (a); or
- The employer is a *nonprofit organization or entity related to, or affiliated with an institution of higher education*. Institutions of higher education are defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a). Such a nonprofit organization or entity includes but is not limited to hospitals and medical or research institutions. "Related to", or "affiliated with" means the entity is (a) connected or associated with the institution of higher education through shared ownership or control by a board or federation operated by the institution of higher education, or (b) attached to the institution of higher education as a member, branch, cooperative, or subsidiary. "Nonprofit organization or entity" means the organization or entity is (a) defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6); 26 U.S.C. section 501(c)(3), (c)(4) or (c)(6), and (b) has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service; or
- The employer is a *nonprofit research organization or governmental research organization*, that is primarily engaged in basic research and/or applied research. "Nonprofit organization or entity" means the organization or entity is (a) defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501 (c)(3), (c)(4), or (c)(6); 26 U.S.C. 501 (c)(3), (c)(4) or (c)(6), and (b) has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service. A government research organization is a United States Federal government entity whose primary mission is the performance or promotion of basic research and/or applied research; or
- This petition is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the \$1,000 filing fee was paid on the initial petition or the first extension of stay;
- This petition is an amended petition that does not contain any requests for extension of stay filed by the employer; or
- This petition is to correct an Immigration and Naturalization Service error.
- The employer is a primary or secondary education institute.
- The employer is a nonprofit entity which engages in an established curriculum-related clinical training or students register at the institution.

Evidence Requirement.

What evidence is required under Part B?

- United States employers claiming exemption from payment of the \$1,000 filing fee on the basis of status as (a) a nonprofit organization or entity related to, or affiliated with an institution of higher education, or (b) as a nonprofit research organization must submit evidence of tax exempt status under the Internal Revenue Code of 1986, section 501(c)(3), (4) or (6), 26 U.S.C. section 501(c)(3), (c)(4) or (c)(6); or
- All other United States employers claiming exemption from payment of the \$1,000 filing fee must submit a statement describing why the organization or entity is exempt.

Part C.

All United States Employers must complete Part C even if they are not claiming the fee exemption in Part B.

Refund of filing fee.

The filing fee of \$130.00 may be refunded **only in the instance of Service error**. To apply for a refund, write to the Immigration and Naturalization Service Office where the petition was filed. Please include a detailed explanation of the circumstance which you believe justifies a refund of fee. There is no provision for the refund of the \$1,000 additional filing fee.

Authority.

The authority to collect this information is contained in ACWIA. Failure to provide all requested information may delay the final decision or result in denial of your request. The Immigration and Naturalization Service will use the information to determine eligibility for the benefit requested, and may provide other agencies with the information.

Public Reporting Burden.

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is 30 minutes per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service 425 I Street, N.W., Room 4034, Washington, DC 20536. **(DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS).**

PART C. Numerical Limitation Exemption Information

- Yes No
1. Are you an institution of higher education as defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001 (a)?
 2. Are you a nonprofit organization or entity related to or affiliated with an institution of higher education, as such institutions of higher education are defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a)?
 3. Are you a nonprofit research organization or a governmental research organization, as defined in 8 CFR 214.2(h)(19)(iii)(C)?
 4. Is the beneficiary of this petition a J-1 nonimmigrant alien who received a waiver of the 2-year foreign residency requirement described in section 214 (l)(1)(B) of the Act?
 5. Has the beneficiary of this petition been previously granted status as an H-1B nonimmigrant in the past 6 years and not left the U.S. for more than a year after attaining such status?
 6. If the petition is to request a change of employer, did the beneficiary previously work as an H-1B for an institution of higher education, an entity related to or affiliated with an institution of higher education, or a nonprofit research organization or governmental research institution defined in questions 1, 2 and 3 of Part C of this form?

I certify under penalty of perjury, under the laws of the United States of America, that this attachment and the evidence submitted with it is true and correct. If filing this on behalf of an organization or entity, I certify that I am empowered to do so by that organization or entity. I authorize the release of any information from my records, or from the petitioning organization or entity's records, that the Immigration and Naturalization Service may need to determine eligibility for the exemption being sought.

Certification.

Signature

Print Name

Title

Date