

H-1B Q&A

What You Need To Know



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The contents of this document do not constitute legal advice.

PROCESSING TIME

The processing time for the H-1B petition varies, depending on the USCIS office handling the petition, as well as any other situations, including USCIS service center's caseload at the time of filing, whether additional documents are requested by USCIS after filing, etc.

It normally takes USCIS 4-9 months to adjudicate a new H-1B petition filed via regular processing, or, if available, 15 days via Premium Processing, which requires an additional processing fee of \$1,410.

H-1B EFFECTIVE DATE

If no employer has ever filed a cap-subject H-1B petition on your behalf, then you were never counted against the H-1B cap, meaning your *initial H-1B can be filed no earlier than April 1.*

An initial H-1B petition filed on April 1, 2019 will be counted towards the cap quota for fiscal year 2020, and, if approved, should take effect beginning October 1, 2019.

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CAP-GAP PERIOD

Once the employer files an H-1B petition with request for change of status, and the petition is selected for processing, the OPT cap-gap extension will begin and continue until the H-1B petition adjudication process has been completed.

If the H-1B cap petition is filed before your OPT end date, and is later selected and approved, your OPT work authorization will automatically extend to September 30, 2019.

If your H-1B petition is denied, withdrawn, revoked, or is not selected through the lottery, you will have the standard 60-day grace period from the date of the rejection notice or your OPT end date, whichever is later, to prepare for and depart the U.S.

If you have already entered the 60-day grace period when the H-1B cap-subject petition was filed, you will receive the automatic extension on your F-1 status, but will not be employment-authorized since you were not authorized to work at the time the H-1B petition was filed.

PROOF OF STATUS DURING CAP-GAP

The OPT cap-gap extension is automatic for eligible students, where an updated I-20 is sufficient to prove continuing status.

INTERNATIONAL TRAVEL DURING CAP-GAP

If you travel abroad during the cap-gap period prior to the approval of your H-1B petition, USCIS will consider it as an abandonment of the change of status, and you are forfeiting the cap-gap benefits. You should be prepared to remain outside the U.S. until the H-1B petition is approved and obtain an H-1B visa stamp at a U.S. consulate in your home country. You will be able to re-enter the U.S. no earlier than 10 days prior to October 1.



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