New Foreign Workers on H-1B Visa—Montana State University

Congratulations on obtaining H-1B visa status for work at Montana State University! Now that you are here, there is some important information below about maintaining your status, H-4 dependents, study, travel and more. Please take the time to read this information and welcome to Montana!
Please contact me for any reason at: sallyo@montana.edu, 406-994-7688.

Please note: Keep your passport valid and make several copies of your I-797 approval notice and the I-94 card for your records.

Study

You are here in the United States on a work visa— not a study visa. You are allowed to take “incidental” classes but not to pursue a degree while on the H-1B visa.

Travel

For travelling within the United States, take with you the following:

1. Photocopy of I-797
2. Valid passport with I-94 card inside
3. Valid driver’s license (if you are driving)

For traveling outside of the United States for the first time with a new H-1B visa, or if the visa needs to be renewed—you will be required to visit an American Consulate for re-entry into the U.S., take with you the following and make sure to make an appointment with the consulate before you go:

1. Original I-797 Approval Form
2. Valid Passport with most recent I-94 card inside
3. Letter of Good Standing (Request from Sally at least a week before you go)
4. Copy of H-1B visa petition
5. Department Employment Contract
6. If you are bringing dependents, take birth certificates and marriage license
7. Whatever else the particular consulate requires of you (check on their website)
If you wish to take care of getting the visa stamp before you have to travel back to your home country, you have the option of visiting an American Consulate in Canada. Calgary is quite close to Bozeman and would require a few days to complete the task. You will need to check to see if an entry visa is required for your home country—and you should always check to see what documentation is required as well as appointment options. There is always a slight possibility that you will be detained in Canada for further investigation. In this case, you should have a plan on what to do if this happens.

Traveling outside of the United States while a change of status petition is pending (such as from an F-1 or J-1 visa to an H-1B visa)

A nonimmigrant worker who travels abroad while an application for change of status to H-1B is pending may be considered to have abandoned the change of status portion of the petition. If the H-1B petition is later approved by USCIS, and the alien is still abroad, he or she can apply for an H-1B visa at a U.S. consulate and then enter the United States in H-1B status.

Travel while extension of stay (renewal) for the H-1B visa is pending

Unlike travel while a change of status application is pending, travel while an extension of stay petition is pending is not viewed as an abandonment of the application for extension of stay. However, a new visa stamp may be required before reentering the United States.

Travel as a pending immigrant (once you have applied for the green card)

It is always a good idea to stay in the United States while you are a pending immigrant waiting for approval of your Legal Permanent Residency (green card). However, if you have to travel and you have a current H-1B visa or Advance Parole, you may do so keeping in mind the small risk that USCIS can view this as abandonment of your case.
Recouping time on the H-1B visa

Time spent out of the United States may be documented in order to add to the six year time limit of the visa.

Documentation might be in the form of copies of exit and entry stamps in the H-1B worker's passport, visa stamps and I-94 cards, airline tickets, employment records, etc. The more clearly the documentation supports the statement, the better.

These special rules for recouping time spent outside the United States do not apply, however, if the H-1B nonimmigrant's H-4 dependents remain in the United States while the H-1B is outside the United States.

Termination of Employment

*Remember that the H-1B visa is employment specific. This means that if the job end, the visa ends—even if there is time left on the visa.*

If an H-1B worker **voluntarily terminates** his or her employment, an employer is **not** liable for the cost of return transportation abroad. Such an employee must, however, depart the United States on the final day of employment with the sponsoring employer, unless he or she has secured the H-1B sponsorship of another employer or otherwise changed immigration status.

If the **employer terminates** the H-1B worker prior to the end of the H-1B petition validity period, for any reason, the employer **is** required to pay reasonable costs of return transportation to the H-1B worker's last place of residence abroad if requested by the worker.

Please notify Sally if your employment has or will be terminated for any reason.
Visa status amended

The following are material changes that require that your H-1B visa be amended by USCIS:

1. Change work hours (from part-time to full-time or vice versa).
2. Change of duties such as adding teaching
3. Changing departments

If there are minor or major changes made in your agreement, you must let Sally know so that she can determine if an amended petition must be submitted.

Also, if you decide to change employers then you must let Sally know that you are leaving MSU. If you change to a different department or lab on the MSU campus, you must let Sally know so that it can be determined whether you need an amended H-1B visa.

H-4 Dependents

Working

H-4 dependents can never work!

If an H-4 dependent qualifies for specialty employment in his or her own right, a change of status to H-1B is necessary before such employment may be undertaken.

Study

“H-4 dependents may study in the U.S., full- or part-time, but the duration of their stay is dependent on the H-1B's period of stay. Dependents should weigh the benefits of changing their status to F-1 versus remaining in H-4 status. H-4 dependents are not subject to the F-1 requirement to pursue a full course of study, but they are not eligible for F-1 benefits such as on-campus employment and practical training”.

There is a possibility that H-4 dependents can petition for in-state tuition. Please contact Becky Roeder for undergraduate (406-994-5543) and Kristin Gill for graduate (406-994-4145)
Travel

An H-4 nonimmigrant may reenter the United States with a valid H-4 visa, provided the H-1B principal continues to maintain his or her status. Traveling with proof of the H-1B's maintenance of status (e.g., copy of I-797 approval notice, proof of continued employment, etc.) is recommended, particularly if the dependent needs to obtain a new H-4 visa before reentering.

Permanent Residency

If you are interested in pursuing permanent residency, you should make an appointment with Sally to discuss your options.

There are currently two employment-based options that MSU can help you with but your eligibility will need to be evaluated.