

## RE: Approval of H-1B Cap Petition

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We are pleased to confirm that the H-1B Cap petition filed on your behalf by the Petitioner (“employer”) listed on your H-1B approval notice (Form I-797) has been approved by the U.S. Citizenship and Immigration Services (USCIS).

### **USCIS Notice of Action (Form I-797) and Validity**

You will receive the original Form I-797 (approval notice) from our office shortly. You should keep the original Form I-797 in your passport. You should also carry the original Form I-797 whenever you travel internationally and be prepared to present it at the port of entry when returning to the United States.

A copy of the H-1B petition filed with USCIS has been saved in the Documents section in Connect in the **Copy of Filing** document. Please download the filing and save it for your records. Please review the petition, especially the letter in support of the petition, to familiarize yourself with the petition filed on your behalf. The petition includes a copy of the Labor Condition Application (LCA) submitted to the Department of Labor in connection with the H-1B petition. Please inform our office immediately if you are not able to access the filing copy through the Fragomen Connect Portal.

The approval notice authorizes your temporary employment with the Petitioner for the validity period indicated on the approval notice (Form I-797) in the specific position and geographic location indicated in the H-1B petition. You must inform your employer’s immigration team before changing your work location or job title/duties as a new position may require an amended petition.

If the H-1B petition was approved as a “Change of Status,” you will find an updated I-94 record authorizing you to remain in the United States at the bottom of Form I-797. You can continue working and traveling through October 1 in your current status. Your status will be automatically changed to H-1B status as of the beginning validity date on the approval notice. You can remain in the United States and continue working in H-1B status. You are not required to have valid H-1B visa in your passport for purposes of employment. Similarly, if applicable, your family can remain in the United States in H-4 classification. If the petition was approved as a “Consular Notification,” the H-1B petition will not go into effect until you depart the U.S. and enter in H-1B status as described in the “H-1B / H-4 Visa Issuance” section below.

### **F-1 Students**

If the H-1B petition was approved as a “Change of Status,” you can continue working through October 1 using your F-1 Employment Authorization Document (EAD) or under the F-1 gap cap provisions, if applicable.

International Travel During Cap Gap: F-1 students with an approved H-1B petition may travel abroad before the H-1B petition goes into effect on October 1. If your OPT expired after April 1 and the H-1B petition was filed as a “Change of Status,” you qualify under the F-1 Cap gap provisions, which means that your F-1 status and work authorization is automatically extended through September 30. You may travel abroad and return to the United States in F-1 status before October 1 even if your OPT EAD has expired.

F-1 students will need the following documents to return to the United States in F-1 status:

- A valid passport;
- A valid F-1 visa stamp that permits multiple entries;
- A Form I-20 Certificate that has been endorsed for travel by the school's DSO in the last six months (and endorsed for a cap-gap extension of stay and work authorization, if applicable);
- Original EAD (valid or expired if cap-gap eligible); and
- A copy of the H-1B petition and approval notice.

When seeking admission to the United States in F-1 status, you will need to establish that you are returning to the United States to resume legitimate F-1 student activities, such as continued study or OPT employment. If your F-1 visa has expired, you will need to apply for a new F-1 visa to return to the United States. You will need to demonstrate to the U.S. Consulate that you are returning to the United States to resume legitimate F-1 student activities. Please be aware that officials at U.S. consulates may question whether you have nonimmigrant intent. Given the heightened scrutiny at U.S. Consulates, we recommend avoiding international travel if your F-1 visa in your passport has expired.

### **H-1B / H-4 Visa Issuance**

**\*\*Canadian Citizens are exempt from H-1B / H-4 visa requirements. To enter the United States in H-1B / H-4 status, Canadian citizens must present the original Form I-797 (approval notice) along with their Canadian passport to a CBP officer at the border or pre-flight inspection at the airport. If you and/or your family members are Canadian citizens, please skip to the "U.S. Entry and I-94 Records" section.\*\***

To enter the United States in H-1B / H-4 status, you and your family members (if applicable) must have valid H-1B / H-4 visas in your passports issued by a U.S. Embassy or Consulate abroad, with the possible exception of trips from the U.S. to Canada or Mexico for less than 30 days (please contact our office for additional details if you do not have a valid H-1B / H-4 visa and plan to travel to Canada or Mexico).

If you and your family members have valid H-1B / H-4 visas in your passports based on a prior employer's H-1B petition, you may continue to use the H-1B / H-4 visas to reenter the United States throughout the validity of the visa. **However, you must also present the approval notice(s) (Forms I-797) to ensure that you are admitted through the validity of the new H-1B petition.** Although the H-1B visa for your previous employer may have an earlier expiration date, the U.S. Customs and Border Protection (CBP) officer should admit you through the expiration date of the approval notice for your new employer.

Please note that Fragomen does not track the expiration date of H-1B or H-4 visas. Therefore, please ensure that you monitor the expiration date of the visa in your passport and plan travel and visa issuance accordingly.

To apply for H-1B / H-4 visas, all applicants are required to appear at a U.S. Embassy or Consulate abroad for an interview, which must be scheduled in advance. There are long delays at some consulates for interviews and/or visa issuance. For current visa appointment and processing wait times, please visit <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html>. The wait time to schedule a visa appointment fluctuates throughout the year and can frequently vary substantially from what is listed on this website.

You and your family members may be able to apply for the visas at a U.S. Consulate in a country other than your home country as a “Third Country National.” However, some U.S. Consulates restrict applications by third country nationals and you may need to obtain visas prior to entering the other country where you want to apply. As each consular post has varying policies and procedures, it is important that you liaise directly with the consular post where you wish to apply to confirm whether the post is able to accommodate an application for a Third Country National.

Depending on the U.S. consulate, you may be able to apply for the H-1B visa stamp up to 90 days in advance of the validity start date. Please review the application procedures at the consular post where you intend to make your visa application to confirm their procedures and processing times before completing any travel arrangements. Please confirm with the consular post whether your children will be required to attend the visa application interview. You can find information on a specific U.S. Consulate at the Department of State’s website at <https://www.usembassy.gov/>.

To obtain H-1B / H-4 visas in your passport, you will need to present the following documents at your visa application interview:

- **Appointment Confirmation Letter:** You must bring the appointment notice confirming the date and time of the scheduled appointment. Please refer to the website for the specific U.S. Consulate for instructions on how to schedule an appointment.
- **Form DS-160 Confirmation Page:** Each applicant must fill out an electronic nonimmigrant **DS-160 Visa Application** form prior to making an appointment for an interview at the U.S. Consulate. Please visit <https://ceac.state.gov/genniv/> to complete the DS-160. Print the DS-160 confirmation page (make sure it has the barcode at the bottom) and bring it to your interview. Please note that a separate DS-160 must be completed for each family member applying with you.
- **Color photograph:** You will need to upload a color passport-size photograph when you complete the DS-160 application. The photograph must be 2x2 inches; show a front view and full face; eyeglasses removed; and be on white/off white background. If you are unable to upload the photo onto the DS-160, please attach the photo to the confirmation page of the DS-160 form. You should bring an additional passport-size photo to the interview.
- **Application Fees:** There is an application fee for each visa. You must bring the fee receipt to your appointment. Additionally, there may be a separate “reciprocity” fee for your nationality. Please confirm both the visa fee and reciprocity fee, if any, with the U.S. Consulate.
- The **original** H-1B approval notice, Form I-797.
- A copy of the H-1B petition filed on your behalf. You can download a copy of the H-1B filing from the Documents section in Connect. Please review the petition, especially the support letter to familiarize yourself with the petition.
- **Original passport(s):** must be valid for at least six months and have at least one blank page available for the visa.

- **Employment Letter:** You should have a short letter verifying your employment. Please contact your employer for this letter before traveling.
- **Proof of family relationship for dependent family members:** Dependent family members (spouse and children under 21) can apply for H-4 visas at the U.S. Consulate along with you, even if they may not be joining you until a later date. You should provide the U.S. Consulate with birth and marriage records to prove the family relationships.

Consular Officers may not be able to issue the visa until your H-1B petition approval is confirmed electronically through agency databases. After the interview, it could take several days to more than one week for the consulate to return your passport to you with the visa, depending on the processing times of the consulate and the time required to obtain electronic confirmation. You will need to leave your passport at the U.S. Consulate while the visa is being issued. Therefore, you should not book non-refundable travel until the visa is issued by the U.S. Consulate. Please keep this in mind when scheduling your travel plans.

### **Security Clearances**

The names of all U.S. visa applicants are checked against the U.S. Department of State's computerized system. The U.S. Embassy or Consulate may also require certain visa applicants to undergo an additional security clearance process. Typically, applicants who are selected for additional security clearances are those from countries that present U.S. national security concerns, those with names similar to individuals in the U.S. government's lookout system, and those who have backgrounds in fields that could have potential military applications.

If a security clearance is required, the consulate will not issue a visa until the clearance has been completed. As the security clearance process is confidential, most U.S. embassies and consulates will not confirm that a security clearance is underway but rather will typically inform the applicant that additional "administrative processing" is required. While most security clearances can be completed in a few days, some can take several weeks or months. Note that if you are placed under administrative processing, you will not be able to travel to the United States using an existing visa until all security checks have been completed and the new visa has been issued. We encourage you to notify your employer and manager regarding the above potential delays which would affect your ability to return to the United States.

### **U.S. Entry and I-94 Records**

You are permitted to enter the United States up to ten days prior to the start of the validity period indicated on the approval notice. However, you cannot work prior to the starting validity date indicated on the approval notice.

When you travel to the United States through a U.S. airport or seaport, you will be inspected by a Customs and Border Protection (CBP) officer, who will create an electronic record of your admission to the United States in the CBP's I-94 arrival record system, indicating your date of entry, class of admission, the date your stay expires, and your basic biographic and passport information. This record, referred to as a Form I-94, constitutes the official record of your authorized stay. You must retrieve and print out your I-94 through the CBP website, at <https://i94.cbp.dhs.gov/I94>, after every entry into the United States. CBP may issue a paper I-94 card to foreign nationals entering through land borders.

The CBP officer may place an admission stamp in your passport, indicating your date of entry, your class of admission and the date your stay expires. If you receive an entry stamp in your passport upon your arrival in the U.S., before you step away from the admission counter, please check the

date of entry, class of admission, and expiration date written in your passport. This step is very important to ensure that you were admitted to the United States in the proper classification and for the correct period. If you notice an error, politely inform the officer.

**You must review the I-94 issued to you and any family members each time you enter the United States.** Timely review of each I-94 record is critical because the expiration date on your most recent I-94 marks the end of your period of lawful admission to the United States, regardless of the expiration date on your most recent I-797 approval notice or the expiration date on your visa.

Please keep in mind that you cannot be admitted to the U.S. beyond the expiration date of your passport, even if the approval notice authorizing your status granted you admission beyond your passport expiration date. It is therefore extremely important that you review your I-94 record after every admission to the U.S. to ensure that your admission has not been cut short to the expiration date of your passport, and to verify that the information in the I-94 record relating to your date of entry, class of admission, and date of expiration of your stay are all accurate.

If you notice an error upon accessing and reviewing your electronic I-94 on the CBP website, it may be possible to request a correction from CBP in the U.S. However, if you fail **to review your I-94 record immediately after entering the United States, you may be required to travel outside the U.S. and then re-enter in order to have your I-94 corrected.** Even an error by the Immigration Inspector in issuing an incorrect nonimmigrant status and/or the wrong expiration date on the I-94 can have a negative impact on your status as well as immigration benefits in the United States. Overstaying the I-94 expiration date by more than 180 days -- even if the overstay was inadvertent -- generally bars readmission to the U.S. for 3 years; overstays of one year or more generally bars readmission for 10 years.

Please also note that if you or a family member overstay the period noted on your I-94 admission record by even one day, you could be subject to a requirement to return to your home country to obtain all future nonimmigrant visas (i.e., you generally will not be able to obtain any future nonimmigrant visa in any country other than your home country).

### **H-4 Dependents (if applicable)**

Only spouses and unmarried children under the age of twenty-one (21) are eligible for H-4 dependent status. If any of your H-4 dependent children will be approaching their 21<sup>st</sup> birthday while in the United States, they must change to an independent visa category such as F-1 student status, if eligible.

H-4 spouses are not entitled to work in the United States except in certain circumstances. Specifically, H-4 dependent spouses may be eligible to apply for an employment authorization document (EAD) if the H-1B visa holder is in the employment based green card process and has an approved I-140 petition or has received a post-six year extension. Any such work authorization is not automatic and the H-4 spouse is only authorized to work during the validity of the EAD.

### **Extension of H-1B status**

You must have an H-1B extension filed on your behalf before your H-1B status expires to preserve your right to remain and work in the United States. Please contact your employer six months before the expiration of your H-1B Petition to ensure enough time remains to process an extension. Additionally, please review your CBP admission record after each entry to the United States and contact your employer and our office immediately if you are not admitted for the duration of your H-1B petition as a shorter admission period may require that your H-1B status be extended earlier than anticipated. Please be sure to track the expiration date indicated at the top of the I-797 H-1B approval



notice. Regulations permit H-1B workers to stay 10 days after the validity period ends. Even if the I-94 record attached to the bottom of the I-797 H-1B approval notice expires 10 days after the validity period ends, you are not authorized to work during this 10-day period.

### **Recapturing Time Spent Abroad**

H-1B workers can remain in the United States for a period of six years (including prior periods of stay in any H or L classification). USCIS will allow you to “recapture” time spent outside the United States during your initial 6-year period in H-1B status. You can recapture any complete 24-hour day outside of the United States. Please retain evidence of your departures from and arrivals to the United States in the event it is necessary to recapture the time you have spent outside of the United States. Such evidence may include copies of boarding passes, airline tickets, CBP admission records, travel itineraries and entry/exit stamps in your passport. We will request this information at the time of your H-1B extension, if necessary. Recapturing time is not necessary if an I-140 Immigrant Worker petition has been approved on your behalf as the I-140 approval qualifies you to extend your H-1B status in three year increments beyond the normal H-1B 6-year limit until a decision is made on your permanent residence application.

### **Documentation Requirements**

U.S. immigration laws and regulations require every foreign national age 18 or older to carry documentation of their lawful registration as a foreign national while in the United States. Documents acceptable for this purpose include Form I-94 Arrival Record; Form I-551 Permanent Resident Card (“green card”); and Form I-766 Employment Authorization Document (EAD). Failure to carry a required document is a misdemeanor; for each offense, you may be fined up to \$100, jailed up to 30 days, or both. While convictions for this offense are not common, in the current climate of heightened national security concern and more stringent immigration enforcement, you are advised to carry the relevant documents with you at all times.

### **Change of Address in the United States**

U.S. immigration law and regulations require that all foreign nationals, including lawful permanent residents, report each personal change of address to the USCIS within ten days of moving. You can complete the AR-11 change of address form on the USCIS’s website at: <http://www.uscis.gov/>. Failure to comply with the address change notification requirements may affect your ability to remain in the United States and your ability to reenter the United States after travel abroad; noncompliance may also be criminally punishable as a misdemeanor, with a fine not to exceed \$200 and/or imprisonment of not more than thirty days. Therefore, it is imperative that you follow the change of address notification requirements.

Should you have any questions, please do not hesitate to contact any member of the Fragomen team that handled the H-1B petition.