

**EMPLOYMENT
OF
NONCITIZENS
IN
NON-PERMANENT
EXCEPTED SERVICE
POSITIONS**

This document was significantly updated on May 25, 2005.
Minor changes have since been incorporated dealing with state
wage determination instructions on pages 19-20.

As of June 8, 2005

Table of Contents

EMPLOYMENT OF NONCITIZENS IN NON-PERMANENT POSITIONS IN THE EXCEPTED SERVICE -- A Summary	3
Useful Websites	8
Listing of Forms.....	9
Country List/ Citizenship Information.....	10
Procedures for Employment of Certain J-1's	11
Procedures for Obtaining a TN Visa -- Professionals under North American Free Trade Agreement (NAFTA).....	13
TN Visa for Citizens of Canada.....	13
Renewal (Extension) of TN Visa -- Canadian or Mexican Citizens.....	14
Procedures for Obtaining a TN Visa -- Mexican Citizen	17
Procedures for Obtaining an H-1B Visa	18
Step 1. State Wage Determination – Streamlined Procedure	19
Step 2. Next obtain the certification from the U.S. Department of Labor using Form ETA 9035, Labor Condition Application for H-1B nonimmigrants.	19
Step 3. Complete Form I-129 for Filing with USCIS.....	20
Step 4. Consider Whether Premium Processing is Warranted.....	24
Step 5. Prepare Transmittal Letter to USCIS Requesting Approval of H-1B Status.....	25
Step 6. Steps after USCIS action.	27
Filing an Extension of H-1B Status	27
Sample Letter Notifying USCIS that Noncitizen is No Longer Employed in ARS	30
Adjusting Status of a J-1 to an H-1B	31
Information on Evaluation of Foreign Education	34

EMPLOYMENT OF NONCITIZENS IN NON-PERMANENT POSITIONS IN THE EXCEPTED SERVICE -- A Summary

SUMMARY	<p>Positions in the competitive service must be filled by U.S. citizens or nationals (residents of American Samoa and Swains Island). The rules regarding citizenship are based on Executive Order and our appropriations act. There are no exceptions in the competitive service. There are exceptions, however, in the excepted service.</p> <p>Note: Clearance from the ARS Office of Homeland Security is required prior to the employment and/or visa sponsorship of a noncitizen.</p>
EXCEPTION	<p>REE agencies may fill certain positions in the excepted service with noncitizens subject to several restrictions.</p>
<p style="text-align: center;">Excepted Service Positions and</p>	<p>The positions that can be filled in the U.S. by noncitizens are normally:</p> <ul style="list-style-type: none"> * postdoctoral research associate positions; * student temporary positions (STEP); and * seasonal agricultural positions (L/A).
<p style="text-align: center;">Specific Nations</p>	<p>These noncitizens that can be hired must be a citizen from a country on the "approved list." These countries are:</p> <ul style="list-style-type: none"> * nations that have treaties with the United States; or * other nations specifically authorized by Congress.
<p>NONCITIZENS WITH PERMANENT RESIDENT CARD (Green card)</p>	<p>A noncitizen who is a citizen from a country on the "approved list" and who possesses a permanent resident card (green card) I-551, issued by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) (formerly the Immigration and Naturalization Service) may be employed in any excepted service position for which they qualify. Normal time frames apply.</p>

<p>F-1 STUDENTS SEEKING PRACTICAL TRAINING AS AN EMPLOYEE OF ARS</p> <p>Employment Authorization Document (I-766) Required</p> <p>Employment cannot exceed duration of visa</p>	<p>An F-1 Student visa who receives their degree may be authorized by USCIS to engage in practical training following the completion of their studies. In order to employ them in ARS, they must be a citizen from a country on the "approved list" and obtain an Employment Authorization Document (EAD).</p> <p><i>The following is provided for information only.</i></p> <p>F-1 students obtain their own EAD.</p> <p>The student must complete and have their foreign student advisor sign an I- 538, Certification by Designated School Official, that the employment is for practical training in the student's field of study. The completed I-538 is supporting documentation for I-765, Application for EAD.</p> <p>The EAD that is issued for this purpose has limits. The practical training (work) must be completed within 14 months of the end of the course of studies and the employment cannot exceed 12 months. Note: any time that the noncitizen has spent in pre-completion practical training is deducted from the 12 month maximum.</p> <p>If desired, the supervisor may pursue obtaining H-1B status if a longer period of employment is desired.</p>
<p>J-1 STUDENTS SEEKING PRACTICAL TRAINING AS AN EMPLOYEE OF ARS</p> <p>Employment approved by the University Responsible Officer</p> <p>Employment cannot exceed duration of visa.</p>	<p>Certain J-1 Exchange visitors may be eligible for employment in a postdoc position. These J-1's are those who are graduating from a U.S. university; are a citizen from a country on the "approved list"; and whose university responsible officer approves the employment in writing. (USCIS approval is NOT required.)</p> <p>These J-1's can be employed for up to an 18- month period. A maximum of 36 months is allowed for practical training which includes any prior academic training as an exchange visitor. For more information, see Procedures for Employing Certain J-1's.</p>

<p>Note on Chinese Nationals</p>	<p>Most Chinese nationals are ineligible for employment in the REE agencies. Only Chinese nationals subject to the Chinese Protection Act of 1992 may be employed. Look for Code EC6 as the first three characters on the reverse side of their Permanent Resident Card. Note: These individuals were in the U.S. on/after June 5, 1989 through April 11, 1990 and not physically present in the PRC for more than 90 days between April 11, 1990 and October 9, 1992.</p>
<p>TN VISAS-- Canadian/Mexican Citizens</p>	<p>The TN visa is normally issued to citizens of Canada or Mexico to be employed in a professional position as a result of North American Free Trade Agreement (NAFTA). TN visas are only issued in increments of one year but can be extended on an annual basis.</p> <p>TN status approval, as documented on the I-797A, is given for a specific employer. Any change in employer requires a new petition which must be approved by USCIS before work can begin with the new employer.</p> <p>Time under a TN visa does not count toward permanent residency. If married, the spouse cannot work.</p> <p>For more information, see Procedures for Obtaining a TN visa.</p>
<p>H-1B Visas</p>	<p>The H-1B visa is typically used for specialty occupations including postdoctoral positions in ARS.</p> <p>Note: Government research organizations, such as ARS, are not subject to the yearly cap on the number of H-1B visas issued by USCIS.</p> <p>Obtaining the H-1B is a lengthy process and can take four months or more. This timeframe can be streamlined if the management unit is willing to spend an additional \$1000 fee for expedited processing to USCIS. This is in addition to the basic filing fee of \$185. Effective March 8, 2005, there is an</p>

<p>H-1B Visas (continued)</p>	<p>additional Fraud Prevention and Detection fee of \$500 which is required for all new H-1B petition for which ARS is the employer. The fee does not apply if the request is for an extension of an H-1B for a current ARS postdoc.</p> <p>H-1B approval, as documented on the I-797A, is given for a specific employer. Any change in employer requires a new petition. However, a noncitizen who currently has an H-1B visa with another employer may begin work with ARS after paperwork has been filed with USCIS.</p> <p>For more information, see Procedures for Obtaining an H-1B visa.</p>
<p>PAYMENT OF FEES</p>	<p>Fees for TN and H-1B petitions for potential employees are paid by the management unit and checks should be made payable to the Department of Homeland Security. Fees for visas for dependents of the H-1B or TN are paid by the noncitizen.</p>
<p>COPIES OF VISA DOCUMENTS</p>	<p>Copies (back and front) of TN and H-1B visas should be forwarded to the HRD servicing specialist for official records.</p>
<p>INFORMATION ON J-1 EXCHANGE VISITORS WHO WISH TO ADJUST STATUS TO H-1B</p>	<p>J-1 Exchange visitors come temporarily to the United States as participants in programs administered by the Department of State. There are numerous categories of J-1 visitors.</p> <p><i>The following is provided for information only.</i></p> <p>J-1, Exchange Visitors who have exhausted their time in that nonimmigrant category, often wish to change their status to H-1B. Many J-1 visas require the noncitizen to return to their home country for a 2-year residency upon completion of their J-1 Program.</p> <p>If their J-1 visa is subject to the 2- year home residency requirement, it is documented in the lower left corner of the DS-2019, Certificate of Eligibility for Exchange Visitors, "Subject to 212(E)."</p>

<p>J-1's who need a waiver of the 2 year home residency requirement</p>	<p>If these J-1's seek a waiver of their 2-year home residency requirement, it is their responsibility. It may take a minimum of 6 months and up to one year. Additionally, the Department of State may not approve the request. The H-1B employment paperwork cannot be submitted to USCIS until the waiver of home residency requirement is approved.</p> <p>Note: There are five grounds under which a J-1 may seek a waiver of their 2 -year home residency requirement. One is a request by an interested U.S. Government agency. USDA will rarely write a letter of support that a waiver of the 2-year home residency requirement is in the “public interest” The REE Undersecretary for Research, Education and Economics is the only USDA official with this delegation of authority. http://travel.state.gov/visa/temp/info/info_1296.html</p>
<p>RESIGNATION OR TERMINATION OF NONCITIZEN</p>	<p>If the noncitizen resigns from their position prior to the expiration date of their appointment, USCIS must be notified. A sample letter notifying USCIS is provided in this document.</p>
<p>SETTING THE NOT-TO-EXCEED DATE</p>	<p>Permanent Resident Cards, I-551 are issued in 10-year increments and are renewable. Appointments of permanent residents can be made or extended without regard to the expiration date reflected on the I-551 if other conditions allowing employment are met.</p> <p>For other appointments of noncitizens, the HRD servicing specialist should review employment authorizing documents for expiration dates. The appointment's not-to-exceed date should not reflect a date later than the noncitizen's authorization to work typically on the I-797 or Employment Authorization Document.</p>

Useful Websites

Agricultural Research Service, U.S.D.A., <http://www.ars.usda.gov>

Listing of companies that perform foreign education credential evaluation services,
<http://www.afm.ars.usda.gov/hrd/jobs/FOREIGN.HTM>

ARS Office of Homeland Security, <http://www.arsnet.usda.gov/ohs/>

Noncitizen Worker Forms and Information including the ARS-230, Noncitizen Data Sheet

U.S. Office of Personnel Management, <http://www.opm.gov>

Federal Employment of Noncitizens, <http://www.opm.gov/employ/html/Citizen.htm>

U.S. Citizenship and Immigration Services (formerly Bureau of Citizenship and Immigration Services and prior to that Immigration and Naturalization Service),

<http://uscis.gov/graphics/index.htm>

Fee Information for I-129 --Click on Immigration Forms Online

Also available on this website are Handbooks (NAFTA, Handbook for Employers on I-9 Requirements)

Department of Labor, <http://www.dol.gov>

Foreign Labor Certification

<http://workforcesecurity.doleta.gov/foreign>

The LCA online system is available at: www.LCA.doleta.gov

U.S. State Department, <http://www.state.gov>

Embassies, <http://usembassy.state.gov/>

Information on the Various Types of **Visas**, Extensions of Stay, Revalidating Visas in the U.S.,

<http://travel.state.gov/visa/index.html>

Information on **J-1 Waivers** of Home Residency Requirement

http://travel.state.gov/visa/temp/info/info_1296.html

Information on **TN Visas For Canadian and Mexican Nationals**

http://travel.state.gov/visa/tempvisitors_types_temp_nafta.html

Listing of Forms

DS-156	Department of State form, Nonimmigrant Visa Application
DS-157	Supplemental Nonimmigrant Visa Application
DS-2019	Department of State form that replaced the IAP-66, Certificate of Eligibility for Exchange Visitors
DS-3035	J-1 Visa Waiver Review Application Instructions
ETA-9035	Labor Condition Application for H-1B Nonimmigrants
IAP-66	Certificate of Eligibility for Exchange Visitors (replaced by DS-2019)
I-94	Departure Record and Receipt -- this is the bottom portion of the I-797A
I-129	Petition for Nonimmigrant Worker
I-539	Application to Extend/Change Nonimmigrant Status (for Family Members of
I-551	Permanent Resident Card (commonly referred to as a "green card" also called an Alien Registration Receipt Card)
I-766	Employment Authorization Document
I-797A	Notice of Action on Petition Bottom Portion is I-94 -- Departure Record and Receipt Authorization to work is given for a specific employer only. Note: Approval of the Petition does not guarantee visa issuance to noncitizen who is in a foreign country. A copy of the I-797 may be used to apply for a new or revalidated visa during the validity period of the petition.
I-824	Application for Action on an Approved Application or Petitioner form to request USCIS to Notify consulate, pre-flight or port of entry of approval
I-907	Request for Premium Processing Service
Visa	Visas are only issued in foreign countries by U.S. consuls -- permits a person to come to the U.S. port of entry or inspection point where they can apply to be admitted to the U.S. for the purpose of the particular visa. USCIS has authority to deny admission.
Petitions	Noncitizens in the U.S. "petition" USCIS for change in status -- they are not really issued visas (see above). If a noncitizen with a petition pending for an H-1B goes home and then tries to return to the U.S., then they will need a visa for re-entry.

Country List/ Citizenship Information

Positions in the excepted service including ARS postdoctoral research associate positions may be filled either by (1) a citizen or national of the United States; (2) a citizen of a country the U.S. Congress has specifically exempted from the restricting legislation in the annual Treasury, Postal Service and General Government Appropriations Act; or (3) a national of a country currently allied with the United States in the current defense effort. Detailed information on Federal employment of noncitizens is available at: http://www.opm.gov/employ/html/non_cit.htm

The U.S. Congress has specifically exempted the following from the appropriations act restrictions:

- Persons who owe permanent allegiance to the United States (for example, natives of American Samoa and Swains Island);
- Aliens from Cuba, Poland, South Vietnam, or countries of the former Soviet Union (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan) lawfully admitted to the U.S. for permanent residence (have a “green card”);
- South Vietnamese, Cambodian, and Laotian refugees paroled into the U.S. after 1/1/75;
- Nationals of the People’s Republic of China (PRC) **who qualify under the Chinese Student Protection Act of 1992**. Note: These individuals were in the U.S. on/after June 5, 1989 through April 11, 1990 and not physically present in the PRC for more than 90 days between April 11, 1990 and October 9, 1992. This is reflected by **Code EC6** as the first three characters on the reverse of their Permanent Resident Card);
- Citizens of Ireland, Israel, or the Republic of the Philippines

Also exempt from the appropriations act ban are nationals of countries currently allied with the United States in a defense effort, (as determined by the Office of the Assistant Legal Adviser for Treaty Affairs, Department of State, 202 647-1345). **Listing of countries as of May 2005.**

Argentina	Cuba	Haiti	Netherlands	Slovak Republic
Australia	Czech Rep.	Honduras	New Zealand	Slovenia
Bahamas	Denmark	Hungary	Nicaragua	Spain
Belgium	Dominican Rep.	Iceland	Norway	Thailand
Bolivia	Ecuador	Italy	Panama	Tobago
Brazil	El Salvador	Japan	Paraguay	Trinidad
Bulgaria	Estonia	Korea (Rep. of)	Peru	Turkey
Canada	France	Latvia	Philippines	United Kingdom*
Chile	Germany	Lithuania	Poland	Uruguay
Colombia	Greece	Luxembourg	Portugal	Venezuela
Costa Rica	Guatemala	Mexico	Romania	

* Great Britain (England, Scotland, and Wales) and Northern Ireland. Additional Note: Immigration law bans employment of noncitizens unless lawfully admitted for permanent residence or are otherwise authorized to be employed.

Procedures for Employment of Certain J-1's

Summary of Steps

ARS Scientist/Mentor

- Scientist identifies potential J-1 for postdoc position ensuring that country of citizenship restrictions are met.
- Obtains the resume, OF-306, original transcript, list of publications, presentations, honors/awards, and one page dissertation from the candidate.
- Discusses ARS position with university representative.
- Discusses employment of the J-1 with servicing HR specialist.
- Requests copy of the DS-2019 from the university and letter approving ARS as employer for practical training.
- Submits SF-52, AD-332, job description, DS-2019, and the candidate's documentation to servicing HRD Branch following Area procedures.

HRD Servicing Specialist

Ensures that all paperwork is complete.

- Issues tentative offer of employment pending background check/security investigation.
- Sends formal offer of employment after receipt of satisfactory background check/security investigation.

Local Responsible Officer of the Sponsoring University

The academic dean or advisor and the local responsible officer (for the J-1 Program) must approve the employment of the J-1 in writing naming ARS, USDA as the employer. The J-1's employment must commence within 30 days after completion of their Ph.D. The J-1 may change employers if approved by the local responsible officer for the J-1 program.

The academic dean or advisor and the local responsible officer for the J-1 Program must:

- ensure that the employment relates to the student's major field of study and be an integral or critical part of the academic program of the exchange visitor student;
- periodically evaluate the effectiveness and appropriateness of the academic training;
- maintain the records on the amounts of academic training that the student has used; and
- coordinate travel outside the U.S.

For postdoctoral training, a maximum of 36 months is allowed which would also include any prior academic training as an exchange visitor. The J-1 Responsible Officer maintains the records on the amounts of academic training that the student has used.

Summary of Responsibilities of ARS Scientists

Mentors of postdocs must work with the university contacts to:

- discuss the duties and responsibilities of the postdoc position with university officials to ensure that the position fulfills program requirements;
- provide evaluations of progress to the sponsoring university, when requested;
- be aware of travel restrictions outside the U.S. for J-1's; and
- understand that many J-1's must return to their home country for two years after their period of study and academic training is completed. USDA rarely supports waivers of home residency requirement as an "Interested Government Agency."

Summary of HRD Responsibilities

Review all paperwork submitted, ensure that security clearance requirements have been addressed, and issue a formal offer of employment.

In the processing of appointment papers, social security should **not** be withheld. (Use special employee code ;62; when inputting the Personnel Action.) The Tax Treaty would determine if Federal Taxes should be withheld.

Procedures for Obtaining a TN Visa -- Professionals under North American Free Trade Agreement (NAFTA)

The procedures for obtaining a TN visa for a citizen from Canada differ from those for citizens of Mexico. TN Visas are made for one year increments and can be extended in one year increments.

TN Visa for Citizens of Canada

In comparison with the H-1B process, it is a quick mechanism for employing a Canadian citizen because the TN Visa can be issued immediately.

Procedure

1. The Canadian citizen makes application with an immigration officer at a:
 - U.S. Class A Port of Entry;
 - U.S. airport handling international traffic; or
 - U.S. pre-clearance/pre-flight station.
2. The following documentation must be presented to obtain a TN Visa:
 - Proof of Canadian citizenship;
 - Fee of \$50 (U.S. check or currency); (This fee is typically paid by the management unit)
 - Entrance on Duty letter signed by the servicing HRD specialist;
 - Copy of position description;
 - Evidence of college degree related to the position (original and one copy); and
 - Valid passport--passport must be kept valid during entire stay.

Family member information: If spouse and/or children are accompanying or joining the TN professional, each will need proof of citizenship. A certificate of marriage is required if bringing spouse. The fees for dependents are paid by the TN professional. There is a fee of \$6 per dependent to obtain I-94, Nonimmigrant Arrival/Departure Record. Dependents of the TN noncitizen, are considered a TD (Trade Dependent). TD dependents are not authorized to work.

If dependents are following the TN, they will have to present copies of the TN's entry documents, proof of citizenship an evidence of a legal relationship (i.e., marriage certificate, long form birth certificate) which entitles them to be properly classified as dependents (TD) of a TN professional.

Request for change/additions of U.S. employers. A Canadian citizen may change or add employers while in the U.S. through the filing of Form I-129 at the Nebraska Service Center. However, employment with a different employer is not authorized and cannot begin until USCIS approval of the petition is received.

Renewal (Extension) of TN Visa -- Canadian or Mexican Citizens

For Canadian or Mexican citizens admitted as a NAFTA Professionals, extension of stay may be granted up to one year as follows:

- If the applicant is in the United States, an I-129 can be filed with the the Nebraska Service Center, U.S. Citizenship and Immigration Services; or
- The applicant may apply at a port of entry using the same application and documentation procedures as required for their initial entry.

Renewals (extensions) of TNs can be filed using Form I-129 and the Nonimmigrant Classification Based on Free Trade Agreement Supplement to Form I-129 (Page 6 of the I-129 form) and sent to the Nebraska Service Center of USCIS. The fee is \$185. No Department of Labor certification requirements apply. The applicant must be in the U.S. at the time of filing the renewal (extension) request. An extension may be granted for up to 1 year. At the present time, there is no specified upper limit on the number of years a citizen of Canada or Mexico may remain in the U.S. in TN classification, as there is with most of the other nonimmigrant classifications.

Family member information: To extend the stay of TD dependents while remaining in the U.S. use Form I-539. It is filed with the Nebraska Service Center. The fee to accompany Form I-539 is \$195 and is paid by the TN professional.

If the TD dependent(s) are applying for an extension of stay at the same time as the TN professional, the TD dependent(s) shall file Form I-539 along with the Form I-129 for the TN professional.

If the TD dependents are not applying for an extension of stay at the same time that the TN professional is applying for an extension, or is applying for a change of nonimmigrant status to TD after the TN nonimmigrant obtains status, the alien must present a copy of the TN's Form I-94, Nonimmigrant Arrival/Departure Record, to establish that the TN is maintaining valid nonimmigrant status.

Selected notes on Completion of Form I-129, if used in filing for the renewal (extension) of a TN Canadian or Mexican.

Part 2 - Information about this Petition page 1 of the I-129

1. TN
2. Check block b
3. Provide previous petition receipt number
4. Leave Blank
5. Check Block e.
6. Number of workers - 1

Part 5 - Basic Information about the proposed employment and employer page 3 of the I-129

4. NAICS Code is 54170

9. Type of Petitioner: check "Organization"

10. Type of business: Agricultural Research- Federal government

Year established: 1862

Current number of employees: ~8000

Gross Annual Income: "N/A"

Net Annual Income: "N/A"

Form I-129 Supplement FT - Nonimmigrant Classification Based on Free Trade Agreement
Supplement to Form I-129 page 6 of the I-129

Follow instructions on form.

Documentation to include with Form I-129 for a Canadian or Mexican citizen includes a copy of their passport, copies of I-94, Nonimmigrant Arrival/Departure Record. A sample letter to USCIS follows:

Sample Letter to USCIS to Renew (Extend) a TN Visa -- Canadian Citizen or Mexican Citizen

U.S. Citizenship and Immigration Services
Northern Service Center
P.O. Box 87129
Lincoln, NE 68501-7129

To Whom It May Concern:

This is to request a renewal of the TN visa of Dr. (Name). Their admission number _____, expires (date).

Dr. _____ began employment with the Agricultural Research Service, (Research Unit Name), (City, State) on (date). He/she holds a full-time (title of position), GS-(series)-(grade), research associate position through (date). His/her current salary is \$ _____, per annum.

Sample paragraph. Dr. _____'s position required completion of a Ph.D. in (scientific discipline). The duties assigned to this position include initiating, planning and conducting investigations toward understanding how (tailor to the position -- sample follows -- fungal biocontrol agents or its products induce gene expression in plant tissues.) Knowledges and skills required include knowledge of (scientific disciplines -- sample follows -- plant physiology, plant pathology, biochemistry, and plant/fungal interactions.) Responsibilities include independently selecting established methods and procedures, developing novel techniques and approaches as needed, conducting assigned research, and preparing reports and manuscripts.

A copy of Dr. _____'S I-94 form is attached, along with a copy of his/her initial employment offer letter, educational documentation, and a check for \$185 to cover the renewal cost for the TN visa.

If you have any questions, please contact me on xxx xxx-xxxx or by e-mail at _____.

Sincerely,

Name
Title

Enclosures

Procedures for Obtaining a TN Visa -- Mexican Citizen

The procedures for obtaining an initial TN visa for Mexican citizens were streamlined in January 2004 and are now very similar to obtaining a TN for a Canadian national. (Note: There is no longer a requirement for filing a labor condition application. Also, Mexican nationals are no longer subject to numerical limitation for these professionals.)

Mexican citizens must still apply for a non-immigrant visa to request admission to the United States. Additional information is available at: <http://www.unitedstatesvisas.gov/>

Family member information: If spouse and/or children (unmarried children under the age of 21) are accompanying or joining the TN professional, each will need proof of citizenship. Applicants must demonstrate a bona fide spousal or parent-child relationship to the principal TN visa holders. (Dependents do not have to be citizens of Mexico.) The fees for dependents are paid by the TN professional. Dependents are considered a TD (Trade Dependent). TD dependents are not authorized to work. They are permitted to study.

Mexican citizen spouses and children must apply for TD nonimmigrant visas at a U.S. embassy or consulate.

If dependents are following the TN, they will have to present copies of the TN's entry documents, I-94, proof of citizenship and evidence of a legal relationship (i.e., marriage certificate, long form birth certificate) which entitles them to be properly classified as dependents (TD) of a TN professional.

Procedures for Obtaining an H-1B Visa

Preliminary Steps

Obtain the following documents from the supervisor:

- * SF-52;
- * AD-332;
- * Position Description;
- * Letter from the supervisor stating why they wish to hire the noncitizen.

Obtain the following documents from the applicant and make copies of the application materials for location records and USCIS:

- * Curriculum Vitae, OF-612, Optional Application for Federal Employment, or Resume completed in accordance with OF-510, Applying for a Federal Job; Ensure that country of citizenship is reflected in the CV or application materials.
- * OF-306;
- * Original transcript;
(NOTE: Graduates of foreign universities must have their transcript translated into English **and** certified that the education is equivalent to an accredited U.S. college or university.)
- * One page abstract of Ph.D. dissertation;
- * List of publications; presentations, honors, and awards;
- * If noncitizen was previously on a J-1 visa, copies of **all** IAP-66 and/or DS-2019 forms (**front and back**);

Send to the servicing HRD specialist:

- * SF-52, AD-332 and Position Description
- * Original transcript, application materials and OF-306
- * If noncitizen was previously on a J-1 visa, copies of **all** IAP-66 and/or DS-2019 forms (**front and back**);

Obtain the following from the servicing HRD specialist:

- * Concurrence from the servicing HRD specialist that the noncitizen meets all qualification requirements.
- * A copy of the EOD Letter documenting the appointment pending receipt of H-1B status.

Procedures for Obtaining an H-1B Visa (continued)

The LAO then follows the steps below to obtain the H-1B:

Step 1. State Wage Determination – Streamlined Procedure

Utilize the “Wage Library” on the Department of Labor Website.

Go to: <http://workforcesecurity.doleta.gov/foreign/>

On the left side of the screen under Quick Links:

Click on the Online Wage Library

Click on OES Search Wizard

Under Select a State: Pick the state where the noncitizen will be working

Under County or Town: Select the county where the noncitizen will be working

From the Occupational list (drop down choices): pick the occupation

Engineering codes begin with 17 (17-2021 for Agricultural Engineer)

Biological and Physical Science codes begin with 19 (19-1022 for Microbiologists)

Select a date: current year

Select a Data Source: ACWIA – Higher Education Industry Database (includes government research organizations)

Then hit the search button

The results on the online wage search will then be shown.

At the bottom of the form, select format record for printing.

Print, sign and maintain the information as back-up to the ETA 9035 form.

Step 2. Next obtain the certification from the U.S. Department of Labor using Form ETA 9035, Labor Condition Application for H-1B nonimmigrants.

The form can be found on the Department of Labor website. Go to:
<http://www.workforcesecurity.doleta.gov/foreign>

**Online submission is recommended. Become a registered user, if desired.
Some notes on completion of the form:**

Employer Business Identification: EIN Number is 72-0564834

Section D. Occupation Code:

LCA Code is 013 for Agricultural Engineers

LCA Code is 022 for Chemists

LCA Code is 040 for Agricultural Scientists

LCA Code is 041 for Biological Scientists

Section E.

Prevailing wage, enter the level 2 wage from ACWIA – Education Database

Block 4, Wage Source, select “other”

Block 5, Year Source Published – enter current year

Block 6, Cite “DOL Online Wage Library”

Section F-1. Chose Block A – Employer is not H-1B dependent or willful violator

Once DOL grants certification, print and sign the Form ETA 9035E. This form is filed with the I-129 to USCIS.

- * **Post a copy of Form ETA 9035 at the location for 10 days.** If applicable, provide the bargaining unit representative with a copy.

Step 3. Complete Form I-129 for Filing with USCIS

- * **Upon receipt of the approved Labor Condition Application, DOL Form ETA 9035, complete form I-129, Petition for a Nonimmigrant Worker,**

Form I-129, Parts 1-6, and Supplement H, must be completed prior to submitting to USCIS.

Below are instructions for some of the more ambiguous entries on the form.

Part 1 - Information about the employer filling this petition page 1 of the I-129

Block 2. USDA, Agricultural Research Service

Federal Employer Identification # 72-0564834

Part 2 - Information about this Petition page 1 of the I-129

Block 1. Requested Nonimmigrant classification H-1B1

Block 2. Basis for Classification

Check **block a** if this noncitizen will be on a **new H-1B visa**

Check **block b** if this is an **extension** of a current noncitizen ARS employee already on an H-1B visa.

Check **block e** if the noncitizen is already on an H-1B visa and we are changing the employer to ARS

Block 5. Requested Action

Check block “a” for new employment with ARS where the noncitizen is not currently in the U.S.; or

Check block “b” for new employment with ARS, and the noncitizen is in the U.S. on another type of visa; or

Check block “c” for extension of employment with ARS of a noncitizen in H-1-B status.

Check block “e” for **extension** of a TN (Mexican or Canadian) employee already in the U.S.

Check block “f” for a **change in status** for a new TN petition (Mexican or Canadian) and the person is already in the U.S.

Part 3 - Information about the person(s) for whom you are filing for page 2 of the I-129

The majority of this section is self-explanatory.

If the noncitizen does not have a social security number leave this section blank (do not use the temporary number that HRD provides if needed for purposes of the SF-52 completion or payment of recruitment incentives). NOTE: If the noncitizen is not in the United States at the time the H-1B paperwork is prepared, they should apply for a SSN as soon as possible after arrival.

“A#” is the alien number and can be left blank if they do not have one.

Part 4 - Processing Information pages 2-3 of the I-129

The majority of the questions in Part 4 are self explanatory. You will have to obtain some of the information from the noncitizen.

1. If the noncitizen is **not currently in the U.S.**, check that you want the consulate office notified of petition approval. Provide the address of the consulate office in the country where they reside closest to their place of residence. (For U.S. Embassies in other Countries, <http://usembassy.state.gov/>) This is also where the noncitizen will obtain the visa. Note: The consulate may require that the noncitizen bring the entire form, I-797, Notice of Action, approved by USCIS before issuing the travel visa.
5. **For initial appointments only**, check yes if family members will accompany the noncitizen and include the number of family members that will accompany the noncitizen. Also, provide additional information on family members by

completing Attachment 1. **(NOTE: Extensions of family members are filed using form I-539.)**

Part 5 - Basic Information about the proposed employment and employer page 3 of the I-129

4. NAICS Code - 541710
9. Type of Petitioner: check "Organization"
10. Type of business: Agricultural Research- Federal government
11. Year established: 1862
12. Current number of employees: ~8000
13. Gross Annual Income: "N/A"
14. Net Annual Income: "N/A"

Part 6 - Signature page 4 of the I-129

As the preparer of the form and representative of the agency, it is suggested that the LAO sign the form on behalf of the Location.

Complete H Classification Supplement to Form I-129 page 7 of the I-129

Complete all appropriate Sections

4. H-1B1 Specialty occupation.

Statement for H-1B specialty occupations and U.S. Department of Defense projects says "As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation" *****NEW guidance from Financial Management Division as of 5-18-2005, is that we may sign and date this section.*****

Complete H-1B Data Collection and Filing Fee Exemption Supplement page 10 of the I-129

Some special notes on completion of this section of the form follows:

Part A. General Information

1. Employer Information
 - Block a. check "no" that ARS is not a dependent employer
 - Block b. check "no" that the petitioner is not a willful violator.
 - Block c, check "yes" that the beneficiary is an exempt H-1B nonimmigrant
 - Block c 2. Check "yes" beneficiary has a master's or higher degree
2. Beneficiary's (Noncitizen's) information

7. LCA Codes

LCA Code is 013 for Agricultural Engineers

LCA Code is 022 for Chemists

LCA Code is 040 for Agricultural Scientists

LCA Code is 041 for Biological Scientists

8. NAICS Code is 541710.

Part B. Fee Exemption and/or Determination

Answer all the questions in this part.

Block 3, check "yes"

Part C. Numerical Limitation Exemption Information

Answer all question in this part.

Block 3, check "yes"

Certification. The LAO should signed and date this supplement.

Attachment - 1 to Form I-129 page 16 of the I-129

Complete this section for family member information if this is an **initial** H-1B petition. (Note: **extensions** of family members are filed using I-539 and fee are paid by the noncitizen.)

Filing Fees charged by USCIS.

Information on the fees charged by USCIS for processing costs can be found on the Internet at <http://www.immigration.gov/graphics/formsfee/forms/index.htm> Always check the website prior to case submission as the fee change often.

Form I-129

As of 4-14-2005, the fee for processing an I-129 is a flat rate of \$185 - check payable to Department of Homeland Security.

As of 4-8-2005, there is a separate \$500 Fraud Prevention and Detection Fee. This fee is required for all new H-1B petitions for which ARS is the employer. The fee also applies if the noncitizen worked for a different employer on an H-1B. It does not apply if it an extension of a current ARS noncitizen already on an H-1B. It must be paid by **separate check** made out to the Department of Homeland Security.

Step 4. Consider Whether Premium Processing is Warranted

For an extra \$1000 fee, USCIS guarantees that they will issue either an approval notice, a notice of intent to deny, a request for evidence or a notice of investigation for fraud or misrepresentation within 15 calendar days. If USCIS fails to meet its 15-calendar-day guarantee, it will refund the \$1,000 but will continue to process the petition expeditiously.

The \$1,000 premium processing fee must be paid with a separate check or money order -- it cannot be combined with the regular petition fee or the Fraud Prevention and Detection Fee. Form I-907 (Request for Premium Processing Service) can be downloaded from the USCIS Web site, <http://uscis.gov/graphics/formsfee/forms/index.htm>
Be sure to print the instructions on the USCIS website that discusses the form to ensure the most current directions and mailings instructions.

In addition to expedited processing, employers that participate in the program may use a dedicated phone number and e-mail address to check on the status of their petition or ask any other questions concerning their petition. The dedicated phone number, e-mail and mailing address for each USCIS Service Center can be found in the instructions for Form I-907.

INFORMATION FOR CHECK WRITERS: The DHS Tax identification number is: 53-0199943

Step 5. Prepare Transmittal Letter to USCIS Requesting Approval of H-1B Status

Sample Letter Follows:

U.S. Citizenship and Immigration Services
(use appropriate regional office address found in form I-129)

To Whom It May Concern:

The United States Department of Agriculture, Agricultural Research Service, submits **an original and one copy** of the following documentation in support of a H-1B petition for (NAME) as a nonimmigrant worker.

1. Form I-129, "Petition for a Nonimmigrant Worker", including Supplement H.

(Note: If applicable, include Attachment 1 to include family member information.)
2. Fee(s) included in this petition are: (Note: all are paid by the management unit)

Basic Filing Fee(s) for I-129: check #____, dated _____, for \$185.

(If applicable) Fraud Prevention and Detection Fee of \$500 (separate check - required for new H-1B petitions where ARS is the employer)

(If applicable) Filing Fee for I-907, Request for Premium Processing Service: check #____, dated _____, for \$____. (separate check)

(Note: All checks are made payable to the Department of Homeland Security.)

3. Entrance on Duty Letter.
4. Approved Labor Condition Application Form, ETA-9035.
5. Copies of application materials. This includes college transcripts (if foreign degrees, include proof of U.S. equivalency and the transcript translated into English, if necessary), resume, copy of abstract of thesis, and listing of publications.
6. Letter from the supervisor stating why they wish to hire the noncitizen.
7. If applicable, for noncitizens in the U.S. in another visa status, copies of previous I-94, Departure Record and Receipts are attached.

If you have any questions concerning this matter, please do not hesitate to call me at (xxx) xxx-xxxx.

Sincerely,
Name
Title
Enclosures

Step 6. Steps after USCIS action.

If the request is rejected, the entire package will be returned with an explanation.

If approved, USCIS will return Form-797, Notice of Action.

1. Copy the front and back of the I-797 and send a copy to the servicing HRD specialist. Maintain the original for location files.
2. If the **noncitizen is in the U.S.**, detach the lower tear-off portion of Form I-797 and give to the noncitizen.

If the **noncitizen is outside the U.S.** and must apply for a travel visa from the consulate with the Department of State, it is our understanding that the noncitizen must present the entire, ORIGINAL I-797 to the CONSULAR OFFICER at the time of their interview and the letter from ARS offering employment.

3. The supervisor and the servicing HRD specialist coordinate the reporting date. The servicing HRD specialist contacts the noncitizen to confirm entrance on duty date. Dates of employment cannot exceed the date reflected on the visa.

Filing an Extension of H-1B Status

If the supervisor determines that an extension of the noncitizen's appointment is needed, it is suggested that **4 months** lead time be allowed before the expiration date of the appointment and status. NOTE: Do not send the paperwork to USCIS more than 90 days prior to the expiration of the current visa.

To initiate an extension, an SF-52 and a letter from the supervisor describing circumstances that warrant extension is forwarded to the servicing Branch, HRD.

After concurrence by the HRD servicing specialist, the LAO again completes the documents listed in obtaining the H-1 B visa.

Information on filing extensions of stay, can be found on pages 12-13 of the I-129 Instructions.

Below are some specific instructions that relate to filing an extension of employment with ARS.

Part 2 - Information about this Petition.

Block 1. Requested Nonimmigrant classification H-1B1
Block 2. Check “b”, Continuation of previously approved employment without change with the same employer
Block 3, give the previous petition receipt number from the I-797, Notice of Action
Block 5, Requested Action, check block “c” for extension of employment with ARS of a noncitizen in H-1-B status .

Note on Family members: H-4 Dependents must use Form I-539, Application to Extend/Change Nonimmigrant Status, to apply for an extension of their stay in the United States. The I-539 should be filed with the I-129 paperwork filed for the H-1B employee; or with evidence that the employee’s I-129 extension is pending; or with a copy of the employee’s I-94 or approval notice showing that he/she has already been granted status to the period requested in the application. As of 5-17-2005, the fee to accompany Form I-539 is \$195 and is paid by the H-1B employee.

Note: If ARS has filed for an extension of H-1B status with USCIS prior to the expiration of the noncitizen’s H-1B visa, the noncitizen can continue to be employed for up to 240 days after expiration of their H-1B status while waiting for the decision. Their appointment in ARS could be extended up to 240 days. If the request for extension of their H-1B is denied, the noncitizen’s appointment **must be terminated immediately.**

Filing an Extension of H-1B Status (continued)

Sample Transmittal Letter to USCIS Requesting Approval to Extend an H-1B Status follows on the next page.

U.S. Citizenship and Immigration Services
(use appropriate regional office address)

To Whom It May Concern:

The United States Department of Agriculture, Agricultural Research Service submits **an original and one copy** of the following documentation in support of an extension of H-1B status for **(NAME)** as a nonimmigrant worker.

1. Form I-129, "Petition for a Nonimmigrant Worker", including Supplement H.
2. Filing Fee for I-129: check #____, dated _____, for \$____. (Note: this fee is paid by the management unit). Check made payable to the Department of Homeland Security.
3. Approved Labor Condition Application Form, ETA-9035.
4. Letter from the supervisor describing the need for the continuing employment of the noncitizen.
5. Copies of the Form I-94, Departure Record.
6. If applicable, I-539, Application to Extend/Change Nonimmigrant Status for Family Members (fee paid by noncitizen)

If you have any questions concerning this matter, please do not hesitate to call me at () xxx-xxxx.

Sincerely,

Name
Title
Enclosures

Sample Letter Notifying USCIS that Noncitizen is No Longer Employed in ARS

U.S. Citizenship and Immigration Services
(Use appropriate regional office address)

To Whom It May Concern:

This is to inform you that the following worker(s), who was (were) employed by our agency under (TN or H-1B) status, has (have) resigned from our agency prior to the expiration of their appointment and are no longer employed by the United States Department of Agriculture, Agricultural Research Service (ARS).

<u>Name</u>	<u>Petition #</u>	<u>Last day of employment with ARS</u>
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If you have any questions regarding this matter please call me at (xxx) xxx-xxxx.

Sincerely,

Name
Title

Adjusting Status of a J-1 to an H-1B

If the supervisor has identified a noncitizen with J-1 status and has determined that this is the candidate he/she wants to hire, it is possible to convert the J-1 to an H-1B. However, of all the possible visas by which a foreign national can come to the U.S. to work or study, none is as problematic as the J-1 or “exchange visitor” visa.

Some J-1 visas require the noncitizen to return to their home country for a 2-year residency upon completion of their J-1 program. This requirement is typically documented in the lower left corner of the DS-2019, Certificate of Eligibility, in the section “Preliminary endorsement of consular or immigration officer regarding Section 212 (e). If a person is subject to the 2-year home residency requirement, there should be an annotation on the visa which says “Subject to 212(E)”; if they are not subject to the 2-year home residency requirement, it will read “Not Subject to 212(E).”

It is the noncitizen’s responsibility to file any necessary paperwork for a J-1 waiver of the 2-year home residency requirements. The waiver must be requested **and approved** prior to submitting a request to USCIS to convert these J-1 holders to H-1B status. **The process of applying for a waiver of the home residence requirement is lengthy (taking from 6 months to up to one year), is sometimes quite complicated, and in the end may not be successful.**

Once an application for a waiver has been submitted, it is not recommended that the noncitizen also submit a request to extend their J-1 status. If the extension is approved first, then their request for waiver of the home residency may be canceled.

Information on waivers of the 2-year home country residency requirement may be found at: http://travel.state.gov/visa/temp/info/info_1296.html
<https://j1visawaiverrecommendation.state.gov/>

There are five waiver application bases of the 2-year home-country residency requirement. The bases are:

1. “No objection” from the home government;
2. Request by an interested (U.S.) government agency. The Undersecretary for Research, Education, and Economics, USDA is the only authorized official who may sign these requests for ARS). <http://travel.state.gov/igasignatories.html>
3. Fear of persecution upon return to the home country due to race, religion, or political opinion;
4. Exceptional hardship;

5. Request by a designate State Department of Health or its equivalent (medical doctors only).

Should the noncitizen receive a waiver of their 2-year home residency requirement, the process for obtaining the H-1B as previously described is followed. The transmittal letter to USCIS is slightly different and documentation must also include copies of all the DS-2019 Forms. A sample transmittal letter follows:

Adjusting Status of a J-1 to an H-1B

Letter to USCIS Requesting Approval to Convert Noncitizen Currently on J-1 Visa to an H-1B Status

U.S. Citizenship and Immigration Services
(use appropriate regional office address)

To Whom It May Concern:

The United States Department of Agriculture, Agricultural Research Service submits **an original and one copy** of the following documentation in support of a H-1B petition for (NAME) as a nonimmigrant worker.

1. Form I-129, "Petition for a Nonimmigrant Worker", including Supplement H.
2. Filing Fees for I-129: check #____, dated _____, for \$_____. **(Note: this fee is paid by check by the management unit).**
Fraud Prevention and Detection Fee, \$500, separate check by the management unit made payable to the Department of Homeland Security
(If applicable) Filing Fee for I-907, Request for Premium Processing Service: check #____, dated _____, for \$_____. **(Note: this fee is paid by separate check by the management unit).**
4. Entrance on Duty Letter
5. Approved Labor Condition Application Form, ETA-9035.
6. Copies of application materials. This includes college transcripts (if foreign degrees, proof of U.S. equivalency, and the transcript translated into English, if necessary), resume, copy of abstract of thesis, and listing of publications.
7. Copy of Nonimmigrant Arrival/Departure Record, Form I-94.
8. Copy of Certificate of Eligibility for Exchange Visitor (J-1) Status, Form DS-2019
(Note: copies of **all** DS-2019 and/or IAP-66 forms -- front and back)

If you have any questions concerning this matter, please do not hesitate to call me at (xxx) xxx-xxxx.

Sincerely,
Name
Title

Enclosures

Information on Evaluation of Foreign Education

Applicants may qualify for many Federal jobs based on academic study completed in accredited colleges or universities. This means education completed in a college or university accredited by a national or regional accrediting association in the United States.

Education completed in foreign colleges or universities may be used to meet Federal job requirements for positions if the applicant can show that foreign education is comparable to education received in accredited educational institutions in the United States. It is the responsibility of the applicant to provide such evidence when applying for Federal jobs.

Federal Job Information/Testing Centers have information about qualification requirements for all Federal positions, and information about the requirements for specific jobs is usually given in job opportunity bulletins for these jobs. An applicant who completed his or her education in a foreign school should carefully review education requirements before applying for a Federal job.

For Federal employment, education received in foreign colleges or universities will only be considered acceptable based on meeting the criteria in the Office of Personnel Management, Operating Manual, Qualification Standards for General Schedule Positions, Section II, General Policies and Instructions, Section 4, Educational and Training Provisions or Requirements, Other Education, page II-11. Evidence that is acceptable and commonly used includes the following:

- (1) The specific courses have been accepted for advanced credit by an accredited U.S. college or university because they would be creditable if the student were to further his or her education at that institution.
- (2) An accredited U.S. state university reports the institution as one whose transcript is given full value, or full value is given in subject areas applicable to curricula at the State university.
- (3) The education completed outside the U.S. has been submitted to a private organization that specializes in interpretation of foreign educational credentials and such education has been deemed at least equivalent to that gained in conventional U.S. education programs.

Note: Before asking an applicant to provide foreign education equivalency documentation for some institutions that are located outside the United States such as Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, Republic of Palau, Federated States of Micronesia, Commonwealth of the Northern Mariana Islands, and Republic of the Marshall Islands, it is suggested that supervisors confer with their servicing human resources specialist. The HR specialist can determine if the institution is accredited by an organization recognized by the Secretary, U.S. Department of Education.

To check, the following steps are followed:

- go to the Department of Education web site at

<http://www.ed.gov/admins/finaid/accred/index.html> for accreditation information

- click on #5 Regional Institutional Accrediting Agencies which will take you to

http://www.ed.gov/admins/finaid/accred/accreditation_pg5.html; this web site list the 10 recognized accrediting organizations and the geographic locations for which they are responsible

- click on the web address of the organization responsible for type/geographic location of the institution

- each web site is different, however, all should have a way to search/locate member institutions (for example you may need to click on "members" or "members and candidates", "directory", and "search")

There are a number of private organizations that evaluate foreign educational credentials for employment and other purposes. All operate on a fee based on the extent of the education to be evaluated. The following website contains a listing of companies that perform this function. <http://www.afm.ars.usda.gov/hrd/jobs/FOREIGN.HTM>