



# Questions and Answers

January 30, 2008

## HELPFUL INFORMATION FOR COMPLETING AND SUBMITTING A FY 2009 H-1B CAP CASE

U.S. Citizenship and Immigration Services (USCIS) uses the information in Part C of the H-1B Data Collection and Filing Fee Exemption Supplement (Form I-129, page 11) to determine whether a petition is subject to the 65,000 and 20,000 (U.S. master's degree or higher) H-1B numerical limitation caps. Please be sure to read these questions and answers carefully in advance of completing the petition.

### **Q: When can I file an H-1B Cap petition?**

H-1B petitions can be filed six months in advance of the requested start date. Therefore, petitions seeking an October 1, 2008 start date can be filed no sooner than April 1, 2008. This is when the majority of H-1B cap subject petitions are filed. Conversely, petitions that are cap exempt may be filed at any time during the year, dependent on the petitioner's need.

### **Q: Where should I mail my H-1B Cap subject petition?**

Specific mailing addresses have been established for purposes of identification and processing of H-1B cap subject cases. The specific filing addresses are listed on the accompanying filing charts. These filing charts are also available on the [USCIS website](#). A separate mailing address has been established for certain types of educational or nonprofit organizations which file H-1B petitions on behalf of beneficiaries that are not counted against the H-1B numerical limitations. A public update regarding the [current H-1B Cap](#) is also available.

### **Q: What is Premium Processing Service?**

For certain employment-based immigration benefits, petitioners may choose to file a Form I-907 with the accompanying filing fee of \$1,000 to have their petition adjudicated within 15 calendar days (this fee is in addition to the required base filing and other applicable fees). H-1B petitions are eligible for the Premium Processing program.

The Form I-907 can be filed at the same time as or subsequent to the filing of Form I-129. If filed subsequent to the Form I-129, please be sure to include the receipt number (i.e. EAC 08 123 51234) of the Form I-129 in the pertinent section of Form I-907. Please use the latest version of Form I-907. Versions prior to August 28, 2006 will not be accepted. For more information concerning the Premium Processing program, please visit our [website](#).

**Q: How do I ensure that my H-1B Cap petition is considered properly filed and accepted?**

Be sure to complete all sections of the Form I-129 petition, the H Classification Supplement to Form I-129 (pages 7 and 8 of Form I-129), and the H-1B Data Collection and Filing Fee Exemption Supplement (pages 10 and 11). Original signatures are required on each form. Send the correct fee amount.

Checks should be payable to the Department of Homeland Security or U. S. Citizenship and Immigration Services dated within the last six months, and include the proper guarantee amount, and signature.

Here are the current fees that petitioning employers must pay:

<b>Base filing fee</b>	<ul style="list-style-type: none"><li>• \$320</li></ul>
<b>American Competitiveness and Workforce Improvement Act of 1998</b>  (ACWIA fee)	<ul style="list-style-type: none"><li>• \$750 For employers with 1 to 25 full time equivalent employees unless exempt</li><li>• \$1,500 For employers with 26 or more full time equivalent employees unless exempt</li><li>• (see H-1B Data Collection and Filing Fee Exemption Supplement, Part B)</li></ul>
<b>Fraud fee</b>	<ul style="list-style-type: none"><li>• \$500 To be submitted with the initial H-1B petition filed on behalf of each beneficiary by a petitioner. (Not for Chile/Singapore H-1B1 cases)</li></ul>
<b>Premium Processing fee</b>	<ul style="list-style-type: none"><li>• \$1,000 For employers seeking Premium Processing Service</li></ul>

It is recommended that all signatures on the petition be in blue ink to readily identify the original signature.

A certified Labor Condition Application (Form ETA 9035) from the Department of Labor must be submitted at the time of filing. A copy of the Labor Condition Application is acceptable. If the Labor Condition Application from the Department of Labor is for multiple positions, provide the name, and USCIS case receipt number of any alien who has previously utilized it.

A duplicate copy of the petition must be submitted at the time of filing if the beneficiary will be seeking nonimmigrant visa issuance abroad. Please review the Department of State website at <http://travel.state.gov/> to make sure that the consulate indicated on Form I-129 is able to process the beneficiary's nonimmigrant visa application and for any other consulate-specific special instructions.

**Q: How do I organize my H-1B package?**

A separate check for each applicable filing fee (Form I-129, Premium Processing, Fraud Fee, and/or ACWIA fee) is preferred.

Here is the preferred order of documents at time of submission. Applicable fees should be stapled to the bottom right corner of the top document (Form I-907, Form G-28, or Form I-129).

- Form I-907 (if filing for Premium Processing Service);
- Form G-28 (if represented by attorney or accredited representative);
- Form I-129 (“Petition for a Nonimmigrant Worker”);
- H Classification Supplement to Form I-129;
- H-1B Data Collection and Filing Fee Exemption Supplement;
- Provide a Table of Contents;
  - Tab items as listed in Table of Contents;
  - Arrival-Departure Record (Form I-94) (if the beneficiary is in the US);
  - and, if applicable, the SEVIS Form I-20 (if current or former F-1 student or F-2 dependent), SEVIS Form DS-2019 (if current or former J-1 or J-2) or Form I-566 (if current A or G nonimmigrant)
  - Certified Labor Condition Application, Form ETA 9035, from Department of Labor;
  - Employer/Attorney/Representative letter;
  - Other supporting documentation;
  - Duplicate copy of the petition if the beneficiary will be seeking nonimmigrant visa issuance abroad.

If multiple petitions will be included in the same courier service or Post Office package, please place individual petitions into separate envelopes within the package.

## **FILING DOCUMENTATION**

### **Notice of Entry of Appearance as Attorney or Representative (Form G-28)**

If the petitioner will be represented by an attorney or other accredited representative, a properly executed Form G-28 should be submitted. Each Form G-28 should include the following:

- All sections completed;
- The printed name and signature of the representative. The representative’s signature can be either an original or a facsimile; and
- The original signature of the petitioner.

### **Form I-129 Petition for a Nonimmigrant Worker**

- Please be sure to complete all sections of the form accurately. Link to the [USCIS website for a list of common errors](#) leading to rejection.
- Be sure the beneficiary’s name is spelled properly and that his/her date of birth is displayed in the proper format (mm/dd/yyyy). Also, country of birth/citizenship and the I-94 # (if applicable) should be reviewed for accuracy.
- If the beneficiary will ultimately be seeking issuance of a visa at a consular office abroad, a copy of the petition and supporting documentation should be included with the filing. For cases where the beneficiary will be seeking a change of status in the United States, a copy is not necessary.
- If the beneficiary is seeking an extension or change of status, the petition should include evidence (e.g. Form I-94 or Form I-797 approval notice) to establish that the beneficiary will have maintained a valid nonimmigrant status through the employment start date being requested.
- A copy of the beneficiary’s valid passport.

### **H Classification Supplement to Form I-129 (pages 7-8 of Form I-129)**

- Please be sure to complete all sections of the form accurately.  
In listing previous periods of stay in H/L classification (question 3), please also include the actual nonimmigrant classification (e.g. H-1B or H-4) held.
- Petitioner must sign the form, preferably in **blue ink**.

**H-1B Data Collection and Filing Fee Supplement form (pages 10-11 of Form I-129)**

- Please be sure to complete all sections of the form accurately.
- If the beneficiary has earned a Masters Degree or higher from a U.S. educational institution, be sure to answer accordingly in Part A, question 5 and Part C, question 7.
- If the petition does not involve a change of employer, Part C question 6 is not relevant. Thus, please answer “No” or provide an “N/A” in the margin of the form to the left of the question.
- Petitioner must sign the form, preferably in **blue ink**.

**Form I-907 Request for Premium Processing**

- Please be sure to complete all sections of the form accurately with original signatures.
- If there is a valid Form G-28 with the file and the attorney is signing the Form I-907, then the representative should sign in both Part 3 and 4 of the Form I-907. Otherwise, the petitioner’s signature is required. We prefer that the signature(s) be in **blue ink**.
- When form I-907 is filed after the filing of Form I-129 please include a copy of the Form I-129 receipt notice along with the Form I-907.

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