

## Technical Advisory No. 20

### Use of H-1B and O-1 Nonimmigrant Visas at the NIH

The H-1B and O-1 are used at the NIH to employ scientists in Title 42 (FTE) positions. Processing of an H-1B or O-1 includes obtaining approval from the U.S. Citizenship and Immigration Services (USCIS).

On November 15, 2000, a modification was made to the NIH policy regarding H-1B visas (<http://www1.od.nih.gov/oir/sourcebook/irp-policy/h-1bmodification.htm>). The H-1B may be used at any time, when appointment to an FTE is justified by the needs of the NIH scientific program. Previously, the NIH would only support a J-1 Exchange Visitor for a change of immigration status to H-1B provided the scientist was appointed to an indefinite FTE (e.g. tenure-track Investigator, Staff Scientist). The change in policy, however, allows for outstanding J-1 Exchange Visitors to be eligible for an H-1B for any FTE designation, including Research or Clinical Fellow. As of November 17, 2005, all requests for an H-1B should be sent directly to the Division of International Services (DIS) [note: review by the H-1 Visa Review Committee (HVRC) is no longer necessary]. For those currently under a J-1, the IC must clearly indicate that they are requesting a change to H-1B, and not a J-1 extension (especially when the J-1 Exchange Visitor has not yet reached his/her maximum duration),

To change immigration status from J-1 to H-1B, or to apply for a new H-1B visa abroad, the scientist must first obtain a waiver of the foreign residency requirement or Section 212(e) of the Immigration and Nationality Act. The most common waiver is the No-Objection Statement (NOS) waiver, which requires a No-Objection statement from the individual's home country government. In order to expedite processing, the NIH will not object to an NOS waiver for someone approved for an FTE position with a request for an H-1B visa.

An O-1 visa may be requested for scientists at the NIH who are ineligible to change from J-1 to H-1B status. Such individuals include the following:

1. Individuals who are from countries that "object" to the waiving of the foreign residency requirement;
2. Foreign medical graduates who have been on an ECFMG-sponsored J-1;
3. Individuals who must apply for an Interested Government Agency (IGA) waiver requiring application from the DHHS Exchange Visitor Waiver Review Board.

USCIS regulations prohibit a change of immigration status within the U.S. from J-1 to O-1 if the two-year foreign residency requirement has not been satisfied or waived; however, the individual may leave the U.S. and apply for an O-1 visa abroad without having to obtain the waiver. The individual continues to be subject to the J-1 foreign residency requirement even though he or she obtains O-1 status. At some future date, should the individual want to apply for H-1B or permanent residence status, the requirement must still be satisfied by spending an aggregate of two years in the home country (or country of legal permanent residence prior to entering the U.S. as a J-1, as indicated on Form DS-2019), or by obtaining a waiver of the requirement.



U.S. Department of Health  
and Human Services

National Institutes of Health

Office of Research Services

9000 Rockville Pike  
Building 31, Room B2B07  
Bethesda, Maryland 20892-2028

ph (301) 496 6166  
fx (301) 496 0847  
[www.nih.gov/od/ors/dirs/isb/isb.htm](http://www.nih.gov/od/ors/dirs/isb/isb.htm)

The standard for an O-1 of "extraordinary ability in the sciences" is that the individual is one of a small percentage of individuals who have risen to the very top of their field of endeavor, and who are coming to the U.S. to continue work in the area of extraordinary ability by engaging in a specific event, i.e., a research project. Evidence must be supplied to establish that the standard has been met.

Consult with DIS first to determine if the O-1 is the only option. Once confirmed, please submit a memorandum requesting O-1 classification and a copy of the candidate's curriculum vitae to DIS. The memorandum should address the candidate's research accomplishments and note how he/she will meet the O-1 criteria. The request must be sent directly to DIS. DIS will review the request to determine if an O-1 is approvable. If it is determined that an O-1 could be approved, the IC will be contacted by DIS to schedule a meeting of all interested parties to develop plans for the petitioning process. An O-1 petition may not be filed more than 6 months prior to the expected effective date; the USCIS requires approximately two to three months to process the petition, but this is always subject to change. Alternatively, for an extra fee, premium processing of the O-1 petition is available by USCIS; under premium processing, USCIS will make a decision on the petition (approval, denial, or request for additional evidence) in 15 days. Please consult with DIS to discuss the use of premium processing.

The information in the first link below reflects the similarities and differences between the two nonimmigrant classifications. It should be helpful in planning your course of action. If you have any questions, please contact your DIS Team at 496-6166 (fax: 496-0847)

DIS Rev. 11/05



U.S. Department of Health  
and Human Services

National Institutes of Health

Office of Research Services

9000 Rockville Pike  
Building 31, Room B2B07  
Bethesda, Maryland 20892-2028

ph (301) 496 6166  
fx (301) 496 0847  
[www.nih.gov/od/ors/dirs/isb/isb.htm](http://www.nih.gov/od/ors/dirs/isb/isb.htm)