

H-1B Overview

for Employees Being Sponsored For H-1B Visa Status





Please Read This Entire Presentation

This presentation provides important information you MUST know during your H-1B employment at UT-Battelle (Oak Ridge National Laboratory (ORNL)):

- The procedure by which the Immigration Services Office will collect information and documents from you
- The time and process involved in the Immigration Services Office completing the legal process required for us to prepare your paperwork
- The time and process involved in filing the petition for approval of H-1B status with the US Citizenship and Immigration Services (USCIS)
- The process involved in obtaining your visa stamp from a U.S. Embassy or Consulate

During your stay in the U.S., you will need to know the information in this presentation to be able to know:

- What your H-1B Approval and other immigration paperwork mean,
- How to "stay legal" in the U.S. during your H-1B "Authorized Stay,"
- Issues that might arise during your employment, and
- How to extend your H-1B visa status.





Topics

- 1. Your Employer: UT-Battelle, LLC (UTB)
- 2. Background Information About U.S. Visas You Must Know
- 3. How the ORNL Immigration Services Office will Process your Paperwork
 - Data-Collection and our Internal Administrative Process
 - The Paperwork You Will be Issued and What it Means
 - Form I-797 Notice of Action
 - How We Will Send You the Final Approved Visa Documents
 - Applying For Your Visa Stamp
 - Entering the United States
- Maintaining your Status ("Staying Legal")
- 5. Traveling Outside the US
- 6. U.S. Permanent Residence
- 7. Helpful Information





UT-Battelle, LLC

Scientists, researchers, and other professionals coming to Oak Ridge National Laboratory (ORNL) for employment are sponsored for H-1B visa status by **UT-Battelle, LLC (UTB).**

ORNL is a place, not an organization.

ORNL is the largest science and energy national laboratory in the Department of Energy System. ORNL is managed by UT-Battelle, a partnership between the University of Tennessee and Battelle.

Lab at a Glance

- Director: Thomas E. Mason
- Staff: 4,400
- Research staff: 1,600 scientists and engineers
- Users and visiting scientists, annually: 3,000
- Budget: \$1.65 billion
- Location: East Tennessee's Anderson and Roane counties, part of DOE's Oak Ridge Reservation
- Established: 1943 as part of the World War II Manhattan Project
- U.S. patents since 2003: 292





Terms You Should Know

<u>Department of State (DOS)</u>: The U.S. government agency that operates U.S. Embassies and Consulates worldwide. It is responsible for issuing visas.

<u>Customs and Border Protection (CBP)</u>: The U.S. government agency that interviews foreign nationals seeking admission to the U.S., either before you enter the U.S. (such as in the airport before departure) or after arrival here.

<u>US Citizenship and Immigration Services (USCIS)</u>: The U.S. government agency that reviews the petitions that employers must file to sponsor foreign nationals for certain types of visa status – including (but not limited to) H-1B.

<u>Department of Labor (DOL)</u>: the U.S. government agency that reviews Labor Condition Applications that sets out certain details about the wages and other terms of employment, to ensure that the H-1B employee is working for equivalent wages and in similar conditions as any other employee in that occupation and geographic area.





Nonimmigrants and Authorized Stay

Foreign Nationals who are permitted to stay in the U.S. only temporarily (for a few years, or less, and often with a pre-set end date to the stay) are "nonimmigrants". People who hold H-1B visa status in the U.S. are one kind of nonimmigrant.

The temporary period of time you are permitted to stay in the U.S. is called your "authorized stay."

Authorized Stay:

The period of time during which you are permitted to be in the U.S. and engaged in the activities permitted by your "status."

Begins on the day you physically arrive in the U.S., and ends on the last day you are permitted to be here.

Usually indicated on the I-94, either when issued to you at an airport or port-of-entry, or as incorporated into the H-1B Approval Notice.





H-1B Duration

H-1B status is available for a total of 6 years, with exceptions:

- An individual who is **physically IN** the U.S. for fewer than 183 days per year has no maximum stay in H-1B status.
 - Must carefully document arrivals and departures!
- An individual who is in the U.S. most of the time, but has trips outside the U.S., may "recapture" each day spent wholly outside the U.S.
 - Such days then are added to the end of the H-1B authorization period, such that the individual is able to be authorized for 365x6 days of H-1B presence in the U.S.
 - These are called "recapture" petitions.
- An individual who has reached a certain point in the employment-based permanent residence process is able to continue to extending his/her H-1B status past the 6th year, for as long as needed until (essentially) permanent residence is granted (or denied).





H-1B Duration versus Your Authorized Stay

- H-1B Status is available for up to 6 years (or more) but you will **NOT** receive an approval of H-1B status for 6 years.
- The petition will request a start date and end date for your H-1B approval period.

- The start date

- will be the date listed in your offer letter, or otherwise agreed to by your supervisor and recruiter, whenever this can be accommodated.
- If the immigration processing will likely take too long, then the Immigration Services Office will choose a start date that is reasonable, likely based on current DOL, USCIS and internal ORNL processing timelines, but that is as close as possible to the desired start date.

- The end date

- Will be the end of your Appointment, as listed in your offer letter.
- If you are being offered a regular position (non-limited term job), then the end date of your H-1B status will be up to three years from the start date as dictated by your supervisor.
- If your appointment is extended, or if you are in a regular position, a second H-1B petition will be filed to "extend" your H-1B status.





Overview of the Legal Process

DOL

The Immigration
 Services Office
 files a Labor
 Condition
 Application (LCA)
 with the DOL that
 sets out details
 about your wages
 and certain other
 terms and
 conditions of
 employment.
 DOL takes roughly

10 business days

to process LCAs.

USCIS

- •The Immigration
 Services Office files
 a petition with the
 USCIS requesting it
 grant approval of
 the H-1B
 classification,
 thereby authorizing
 you to fill the
 precise job
 described in the
 petition.
- When the USCIS approves the petition, it issues a Form I-797 Notice of Action.



inside the U.S., the H-1B will take effect on whatever start date we list in the petition. You do not NEED to leave the U.S.

If you are

DOS

- •If you are outside of the U.S., you must visit an Embassy or Consulate for issuance of an H-1B visa stamp. •You must take
- You must take Form I-797 Notice of Action (copy or original) with you to the consular interview.

CBP

•When you enter the U.S., you present the H-1B visa stamp to the CBP Officer at the airport or port-ofentry. The Officer issues an I-94 Card that grants you H-1B status until the end date noted on the card.





H-1B Processing by the Immigration Services Office

The Immigration Services Office has a very heavy workload and we prioritize in order of need, normally based on arrival dates and/or expiration dates.

- The process involved in obtaining H-1B visa status:
 - o Is set by law,
 - o Involves many departments within ORNL, and
 - o Is largely invisible to the employee.





The Immigration Services Office Process

- 1. The Immigration Services Office begins by sending you 2 messages. The first message contains:
 - a. The URL of the webpage with this Orientation that you must access, and
 - b. A login to access our online system to answer questions and upload documents.
- 2. The messages are from donotreply@ww3.welcomeclient.com.
 - a. The first message is entitled "Welcome YOUR_NAME." **Sample below**:
 - b. The second message is entitled "Information you Requested."

From: donotreply@ww3.welcomeclient.com

Sent: 15 July 2012 17:07

To: Sunny Smiles

Subject: Welcome Sunny Smiles

Dear Sunny,

Congratulations on your acceptance of a position......





Our Internal Procedure – Online System

- 3. You must read this Orientation and ensure that you understand its contents.
- 4. When you log into our online visa management system, you will find "Questionnaires" and "Required Documents."
 - ALL questionnaires must be answered in full.
 - ALL requested documents must be uploaded to the online system.
 - The greatest causes for delays in processing by the Immigration Services Office are incomplete answers and lack of required documents.
 - Please help us to be most efficient by answering all questionnaires in full.
 - If a document is not available to you such that it cannot be obtained or significant time will be spent obtaining it, contact us. Do not waste time struggling with this issue without talking to us!





Our Internal Procedure

5. Immigration Services Office Processing

- Immigration Services will review your information and documents as you upload them to the online system.
- Once certain internal processing is complete, we will prepare a LCA and file it with the DOL.
 - The DOL takes about 10 business days to process an LCA, but this changes widely over time.
- Once the LCA is "certified" (approved), we will take the next step, which is to prepare the
 petition and supporting documentation for submission to the USCIS.
 - It takes the Immigration Services Office at least a week to complete our preparation of the petition and supporting documentation, after the certification of the LCA as long as all required documents have been received.
 - The petition includes government forms, as well as documents relating to ORNL, UTB, and your proposed duties and responsibilities. It also must include documentation of your education, your CV, and in some cases, your publication list.

6. USCIS Processing

 USCIS takes up to six months, on average, to process an H-1B petition. Time frames are always subject to change without notice.





Our Internal Procedure

7. **Premium Processing**

- It is possible to request expedited processing, which the USCIS calls "premium processing." This costs an additional \$1,225 (subject to change) in government filing fees, and requires the completion of an additional government form.
- The Premium Processing request can be filed at any time while the petition is pending with the USCIS. It does not have to be filed when the petition is filed. At ORNL, a *business justification from the hiring manager* must be submitted to Immigration Services for Premium Processing to be considered.
- Premium Processing "guarantees" that the USCIS will provide an initial "response" within 15 calendar days of receiving the petition. A response is either (1) an approval; (2) a "Request for Further Evidence" (RFE) or (3) denial. If an RFE is received, USCIS will issue a final decision on the petition within 15 calendar days of receiving our answer to the RFE. Thus, the maximum processing time when Premium Processing is requested is 30 days, plus any time involved in our collecting our answer to the RFE. However, the "guarantee" is fairly weak. If the USCIS takes longer than these timelines, the only consequence it faces is to repay the \$1,225 Premium Processing fee. Repayments do not often occur, but when they do it is common for it to take more than 1 year to be issued.





Our Internal Procedure

- 8. Once the USCIS completes processing of the H-1B petition, a Form I-797 Approval Notice will be issued. This Notice is sent to ORNL via regular postal mail and takes about 7 business days to arrive.
- 9. If you are in the U.S., then the H-1B will become effective on the start date listed in the petition. You do not need to do anything further.
- 10. If you are outside the U.S., then you must apply for a visa stamp with which to enter the U.S. (See the next section of this presentation.) Your immediate family (legally married spouse and children (under 21 years of age)) may apply for their H-4 "derivative" visa stamps at the same time.
- 11. Any time you leave the U.S. during your H-1B employment, you must have a valid and unexpired H-1B visa stamp for ORNL in your passport.
- 12. Your admission (I-94 Card End Date) will be granted only up to the expiration of your passport (or 6 months prior to its expiration, depending on your home country). This earlier end date would "trump" the I-797 approval period.

Be aware of your passport's expiration date!





Visa Application

- 1. If you are outside the U.S. at the time the H-1B petition is approved, or if you have to travel sometime during your H-1B employment, you are responsible for applying at a U.S. Consulate for issuance of the H-1B visa stamp to authorize your admission to the U.S.
 - You must check with the Consulate where you intend to apply to confirm their requirements.
 - Each Consulate has different local rules and the Immigration Services Office cannot, generally, advise you.

2. In general,

- You must have an unexpired passport to schedule your visa appointment.
- You must complete an electronic government form (DS-160) online for each person who is seeking a visa.
- Most Consulates have waits ranging from 1 week to 1 month for interviews.
- You must take a photocopy or original of the Form I-797 Approval Notice with you to the Consulate for your visa interview. The Consulate website should say whether the original is required, or whether a photocopy is acceptable. We strongly recommend you also take your CV and publication list.
- Issuance of the visa stamp itself normally takes 1 2 weeks, but might take up to 1 month. *In some cases, processing might take longer.*

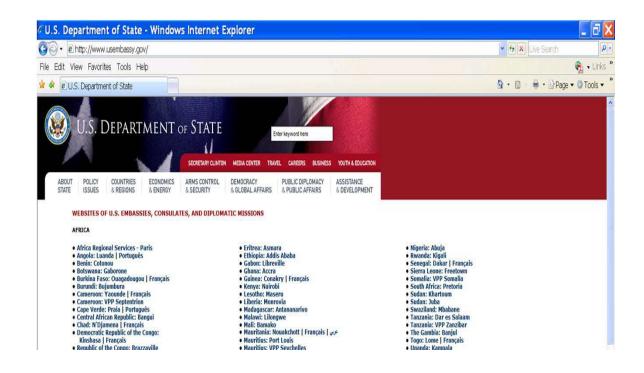




Where to Find Information About US Consulates

Please contact the US Embassy or Consulate where you will apply for application instructions.

Many of their web pages are listed at http://usembassy.state.gov/.







Administrative Processing

- Many non-U.S. citizens must undergo Administrative Processing before being issued their visa stamps.
 This is a result of U.S. federal law and, as a result, no one can speed up the processing time.
- The decision whether or not administrative processing will apply to you is based on a combination of factors, including:
 - Your credentials, education, and/or field of expertise,
 - Your nationality,
 - o Your name, gender, and/or age,
 - The places you have visited in the past and a variety of other elements.
- Once the decision is made by the Embassy/Consulate that Administrative Processing is needed, there is nothing that can be done until the processing is completed. It has been our experience that Administrative Processing timeframes can range from a few days or weeks to several months.
- If, at the conclusion of your interview, the Consular Officer indicates that your visa application will undergo Administrative Processing, please let us know.
- Again, ORNL's Immigration Services Office cannot do anything to affect the time period for completion of Administrative Processing.





Your H-1B Approval Notice

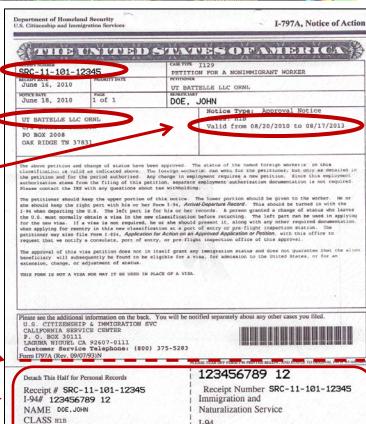
Your Petition Receipt Number

Your Employer

The validity period of your approval.

If you are outside the U.S., then your Form I-797 essentially ends here. The bottom of the form is blank.

If you are in the U.S. and extending your H-1B status, your I-797 Approval Notice will include an I-94 Card that shows your new "Authorized Stay." (See the next slide...)



Departure Record

Petitioner: UT BATTELLI

Form I-797A (Rev. 10/31/05) N

85 Due of Birth 81/18/1975

VALID FROM 08/20/2010 UNTIL 08/17/2013

OAK RIDGE TN 37831

PETITIONER: UT BATTELLE LLC ORNL PO BOX 2008





H-1B Approvals

An H-1B Approval does **not** mean you can do anything you want once you arrive in the U.S. The approval is limited to:

- The employer listed in the petition and on the I-797,
- The duties listed in the petition,
- The physical worksite listed in the petition,
- The dates listed in the Form I-797.
 - WARNING! A later-issued I-94 trumps the original Form I-797!
 - If you enter the U.S. and an officer at the port-of-entry gives you an I-94 Card with an earlier end date than the I-797 Approval Notice, that earlier end date is now the end of your Authorized Stay. It "trumps" (overrules) the I-797. This is called the Last Action Rule. Notify Immigration Services if this happens!!







Your Visa Stamp and I-94 Card

OAK RIDGE NATIONAL LABORATORY

Visa Stamp: Admission document.

Presented during admission to the U.S. – irrelevant once IN the U.S.

A person may hold multiple unexpired visa stamps at any one time.



<u>I-94 Card</u>: Status document.

Is the legal evidence that you are permitted to be physically present in the U.S. and engage in the activities listed in the petition. A person may hold only one I-94 Card at a given time. DO NOT LOSE THIS CARD. You must surrender the card when you leave the U.S. Failure to do so may delay your entry in the U.S. in the future. Currently \$330 to replace the card (subject to change). This fee is not reimbursable by UTB.







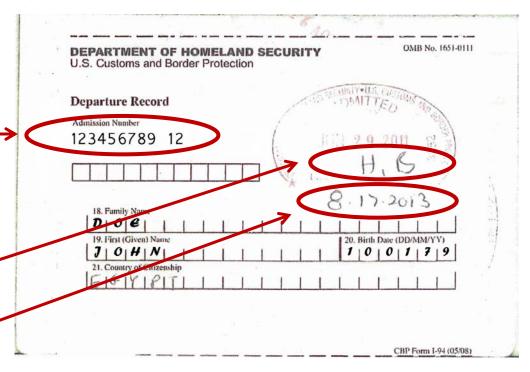
Anatomy of an I-94 Card

I-94: A cardboard form issued by the CBP during admission that confirms you are legally in the U.S.

This is your Admission Number. It is a tracking number that you will need to write on other government forms, such as the I-9 Form you complete on your first day of employment

This confirms that you were granted H-1B status during Admission.

This is the end date to your "Authorized Stay." This is the last day you are permitted to be in the U.S., unless a petition to extend your H-1B status is filed.







Visa Processing and Arrival

Please tell the Immigration Services Office:

- The date for which your visa appointment is scheduled and at which Embassy or Consulate,
- How the interview proceeded and whether the Consular officer gave you an indication of when the visa stamp might be issued,
- When you receive the visa stamp,
- When your flight is scheduled to arrive in the U.S. (if you are traveling from outside the U.S.) or when you anticipate arriving at ORNL to begin your employment.
- If your visa stamp issuance is delayed past the date on which you had anticipated beginning your employment, please contact Immigration Services to point this out. Certain administrative steps have to be coordinated with other departments and we will let them know on your behalf.





Your First Day at ORNL

Employees may start their first day of work at ORNL in New Employee Orientation. New Employee Orientation takes place *most* Mondays at 8:00 a.m. at the ORNL Conference Center.

Either during New Employee Orientation or your first day at work, an Immigration Services Office employee will meet with you to complete your Employment Verification Form I-9, which is required from all employees regardless of citizenship or immigration status. To complete the I-9, in your circumstance, you will need the following:

- Your original passport and the H-1B visa stamp contained inside it, and
- The I-94 issued to you during Admission.





Maintaining Status ("Staying Legal")

- To "maintain status" means to ensure that you follow all the applicable laws and rules about your visit to the U.S. It is very important to properly maintain your H-1B status. Failure to do so may bar you from returning to the U.S. in the future.
- Maintenance of your visa status is your responsibility. The ORNL Immigration Services Office is here to assist you.
- You must:
 - Engage in the research activities listed in your H-1B petition.
 - Not engage in any other activities, or at any other worksites.
 - Not do anything that breaks U.S. law, or which might embarrass UT-Battelle or the U.S. Departments of Energy or State.
- If your supervisor substantially changes your job (changes more than 50% of your duties), or if you get promoted to move to another job that is more than 50% different from that described in the H-1B petition, immediately contact the Immigration Services Office. We can file an "amended" petition that tells the USCIS about the changes and authorizes them.





Traveling Outside the U.S.

If you plan to travel outside the U.S. during your tenure at ORNL, you must contact the ORNL Immigration Services Office prior to such travel to determine what documentation is necessary for you to be able to re-enter (such as *a new visa or a confirmation of employment letter*).

Upon your return to the U.S., you must provide the Immigration Services Office with a copy of your new I-94 Card and visa stamp. It may be possible to scan and upload these documents directly to the online immigration system. Your Immigration Specialist will advise you of the best way to transmit these documents to the Immigration Services Office.







Extending Your Visit at ORNL

As mentioned, H-1B status is available for roughly 6 years (with exceptions).

- Limited-Term Employees (employees who have end dates to their appointments):

 If your supervisor wants to extend your H-1B approval period, your Division must request a new offer letter that lists an new Appointment end date. Once the Immigration Services Office receives the new offer or invitation, we will begin processing paperwork to extend your visa.
- Regular Employees (employees whose jobs do not have a preset end date):
 The Immigration Services Office will contact you roughly 6 months prior to the expiration of your current
 H-1B approval, to begin work on the petition for extension of your H-1B status. (Immigration law does not
 permit submittal of an extension before six months.)





Sponsorship for Permanent Residence

H-1B employees who have regular appointments (employment without end dates) *may be* sponsored by UTB for permanent residence according to certain criteria, Company guidelines, and upon approval by their supervisor and division director.

Extensive information about UTB's sponsorship of permanent residence can be accessed once you arrive at ORNL.

The first step to initiating sponsorship is to talk with your supervisor after you have been on the UTB payroll for one full year. Certain forms must be submitted to the Immigration Services Office and must be signed by your supervisor and division director. The Immigration Services Office will contact you regarding the next steps once the signed forms have been received.





Sponsorship for Permanent Residence

H-1B employees in limited-term jobs <u>are not sponsored for permanent residence</u>. This is because U.S. immigration law requires for most categories of sponsorship that there be an indefinite or "tenure-track" offer of employment, which is lacking in situations of limited-term employment.

Such individuals may, if they choose, retain their own attorney to prepare and file permanent residence petitions. The only two categories where "self-sponsorship" is possible are the National Interest Waiver category and the Extraordinary Ability category. In each case, certain documentation must be provided with the petition that demonstrates that the individual is somehow particularly deserving as compared to peers. Individuals who are younger within their careers tend to have difficulty with this. Often, it is a more prudent use of time and money to invest for a year or two in developing the documentation needed to support such permanent residence petitions (all of which tend also to advance one's career), and THEN apply, rather than to immediately invest in the filing of a less-documented petition with a much lower chance of approval.

Information and guidance on the categories mentioned above and the permanent residence process can be found at http://www.uscis.gov/portal/site/uscis.





We are available for discussions if you have questions, ideas, or comments about any aspect of your daily life in East Tennessee or at ORNL.

ORNL Immigration Services Office

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