The H-1B visa is a non-immigrant visa category that allows U.S. employers to temporarily employ foreign workers in specialty occupations. A specialty occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor’s degree or the equivalent in the specific specialty.

H-1B visas are employer specific, meaning employees on H-1B can only work for the employers that sponsored their petition. While concurrent employers are permitted, each employer must file a separate H-1B petition on behalf of the employee for the specific job role they will perform. Each H-1B petition is tied to a particular employer, job position, and work location.

Criteria
Georgia Tech sponsorship for H-1B status is available for the following employment categories:

- Postdoctoral Fellows
- Regular Research Faculty
- Regular, Non-Tenure Track Teaching Faculty
- Staff
- Tenured or Tenure-Track Teaching Faculty

The position must meet one of the following criteria to qualify as a specialty occupation:

- Bachelor’s or higher degree or its equivalent is normally the minimum entry requirement for the position.
- The degree requirement for the job is common to the industry or the job is so complex or unique that it can be performed only by an individual with a degree.
- The employer normally requires a degree or its equivalent for the position.
- The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree.
**Process**

New employees must first go through the Hiring and Hosting Eligibility Determination process. More information on this process can be found in the [Hiring a Foreign National Knowledge Article](#).

For continuing employees or employees with approved Hiring and Hosting Eligibility Determination e-forms, department HR will need to complete the Nonimmigrant Petitions for Faculty, Staff, & Researchers e-forms in iStart. Departments should initiate the process 6 months prior to the start date, or the expiration of their current work authorization expires. The employee will also need to complete several e-forms detailing their status history and biographical information.

Once submitted in iStart, Global HR will determine the prevailing wage and actual wage. The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment and is established by the Department of Labor. The actual wage is the wage rate paid by Georgia Tech to similarly employed workers with similar qualifications and experience for the same job role. It reflects the wage that Georgia Tech pays its employees for comparable work. Global HR will determine the prevailing wage and actual wage based on information submitted by the department. If the prevailing wage or actual wage is higher than the salary offered, departments will be notified.

Once the wage requirements have been met, the next step is certification of the Labor Condition Application (LCA), also from the Department of Labor. After Global HR submits the LCA, it is certified in 7 days.

Once all supporting documentation and fees have been submitted to Global HR, the petition will be assembled and mailed to USCIS.

**Maintaining Status/Employer Compliance**

**Changes in Employment**

Employers sponsoring H-1B visa holders are required to submit certain changes and updates to USCIS to maintain compliance with immigration regulations and ensure the validity of the H-1B petition. These changes typically involve updates to the terms and conditions of employment. Departments are responsible for submitting the appropriate e-form in iStart under the Nonimmigrant Employment Updates task. Some of the key changes that would require an amended petition to USCIS are as follows:
**Material Changes in Employment**: If there are material changes in the terms and conditions of the H-1B worker's employment, such as changes in job title, job duties, work location, or salary reduction, Global HR must file an amended H-1B petition with USCIS. Material changes can affect the validity of the original H-1B petition, and failure to file an amended petition can result in compliance issues.

**Restructuring**: In cases where the departments undergo changes, such as mergers, acquisitions, or restructuring, Global HR may need to submit updates or amendments to the H-1B petition to reflect the structure.

**Termination of Employment**: If the employment of an H-1B worker is terminated for any reason before the end of the authorized period of stay, the employer is required to notify USCIS and withdraw the H-1B petition. If the employee is involuntarily terminated, Georgia Tech must pay the reasonable costs of transportation to the worker’s last place of foreign residence.

H-1B visa holders may be granted a 60-day grace period at the discretion of USCIS when employment is terminated before the end of their authorized period of stay, whether voluntarily or involuntarily. This period allows the individual time to find new employment, file for a change of status, depart the U.S., or take other appropriate actions.

**Employment Transfers**

H-1B portability allows H-1B visa holders to change employers while remaining in the United States. H-1B visa holders who are currently employed by one U.S. employer and have an approved H-1B petition are generally eligible to transfer to a new employer. To transfer to Georgia Tech, Global HR must file a new H-1B petition on behalf of the employee. Employees are permitted to begin working at Georgia Tech once Global HR has received the receipt notice from USCIS.

Please note that the employee should not resign from their current position until Georgia Tech has filed an H-1B petition on your behalf AND Global HR has received a receipt notice from USCIS. The employee cannot begin working at Georgia Tech until a receipt notice has been received. Additionally, any gap in H-1B status could result in a denial of the petition by USCIS.

**Length of Stay & Extension of Status**

H-1B visas require adjudication by U.S. Citizenship and Immigration Services (USCIS). H-1B visas are granted for an initial period of up to three years, with the possibility of extension for up to six years in total. Extensions beyond the six-year limit are only possible in very specific circumstances. Please consult with Global HR for more information on extensions beyond 6 years.
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USCIS can approve H-1B petitions for an initial period of up to three years and can grant extensions for up to an additional three years. Under certain circumstances, USCIS may extend an H-1B worker’s employment authorization beyond the six-year limit. For more information on this, please contact Global HR.

For an H-1B worker to continue working beyond the expiration of their current H-1B status, Global HR must request an extension of stay before the end date of their approved H-1B status. If a petition to extend an employee’s status is timely filed, they are authorized to continue working for up to 240 days while USCIS processes the petition, or until USCIS makes a decision on your petition, whichever comes first.

Departments can request extensions up to 6 months prior to the expiration of their current H-1B status.

Travel

When travelling in H-1B status, Global HR recommend the following documents:

1. **Valid Passport**: 
   Ensure that your passport is valid for at least six months beyond your intended date of return to the United States.

2. **Valid H-1B Visa Stamp**: 
   Check the expiration date on your H-1B visa stamp in your passport. You need a valid visa stamp to re-enter the U.S. after international travel. If you do not have a valid H-1B visa in your passport, you will need to apply for it at a US embassy or consulate. You can find more information on visa wait times and how to schedule an appointment here: [travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html](travel.state.gov/content/travel/en/us-visas/visa-information-resources/wait-times.html)

3. **Form I-797 Approval Notice**: 
   Carry a copy of your most recent Form I-797, Notice of Action, which is the approval notice for your H-1B petition. This document confirms your H-1B status and employment authorization. If you have not already, you can pick up your notice from the HR building (no appointment required). See here for address and hours: [hr.gatech.edu/#contact-us](hr.gatech.edu/#contact-us)
4. **Employer’s Letter/Offer Letter:**
   Carry a letter from Georgia Tech detailing your employment, including your job title, salary, and the purpose of your trip. This letter can serve as additional documentation when entering the U.S. Alternatively, you can bring your offer letter.

5. **Proof of Continuing Employment:**
   Documents that demonstrate your ongoing employment, such as recent pay stubs for the last 3 months.

We also recommend that you check your I-94 after your arrival back to the US to verify your authorized period of stay in the US. You can upload any new immigration documents in iStart via the Immigration Document Update.

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**Other Information**

**Dependents**
Spouses and unmarried children (under the age of 21) are permitted to have H-4 status for the duration of the primary status holder. Individuals may engage in full- or part-time study.

For H-4 dependent(s) in the US, the H-1B visa holder is responsible for completing Form I-539 to extend or change their dependent’s status to H-4. The form can be found on uscis.gov. Please read the instructions and the form carefully. The I-539 can either be submitted with the H-1B petition (as a courtesy) or after the receipt notice has been received. If the employee would like the I-539 submitted concurrently with the I-129, supporting documentation and filing fees must be submitted to Global Human Resources before the LCA is certified.

For H-4 dependents outside the US, after USCIS approves the Petition for a Nonimmigrant Worker (Form I-129), dependent(s) may apply for a visa. There are several steps in the visa application process. The order of these steps and how your dependent(s) complete them may vary at the U.S. Embassy or Consulate where your dependent(s) apply. Please consult the instructions available on the embassy or consulate website where your dependent(s) will apply.

In general, H-4 dependents are not permitted to engage in employment activities. Only certain H-4 dependent spouses of H-1B nonimmigrants can file Form I-765, Application for Employment Authorization, if the H-1B nonimmigrant:
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- Is the principal beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker; or
- Has been granted H-1B status under sections 106(a) and (b) of the American Competitiveness in the Twenty-first Century Act of 2000 as amended by the 21st Century Department of Justice Appropriations Authorization Act (AC21).

Please see the [USCIS Employment Authorization for Certain H-4 Dependent Spouses website](https://www.uscis.gov) for more information on eligibility and application requirements.

Please note that Global HR is not able to advise on matters related to H-4 dependents. If there are any questions about applying for or maintaining H-4 status, a qualified immigration attorney should be consulted.

**Site Visits**

USCIS occasionally sends site inspectors to Georgia Tech to meet with departments and individuals in H-1B status to verify whether the foreign national is employed as was represented in the petition to USCIS. These site visits are often random and may occur prior to or after approval of a given petition. The inspector will likely ask for information about the person’s employment, including an overview of duties, as well as proof of employment (often in the form of paystubs or W-2 forms). If you have any questions about site visits, please contact Global Human Resources.

**Rule**

Individuals who are subject to the Immigration and Nationality Act, Section 212(e) must either fulfil the 2-year home residency requirement or apply for a waiver from the Department of State. For more information, please visit the Department of State Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement website.