

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

This document has been updated to reflect changes in fees charged by the U.S. Citizenship and Immigration Services, Department of Homeland Security, and to update the listing of allied countries.

Revised
July 1, 2004

INDEX

EMPLOYMENT OF NONCITIZENS IN NON-PERMANENT POSITIONS IN THE EXCEPTED SERVICE -- A Summary	3
Useful Websites	9
Listing of Forms	10
Country List/ Citizenship Information	11
Procedures for Employment of Certain J-1's	12
Procedures for Obtaining a TN Visa -- Professionals under North American Free Trade Agreement (NAFTA)	14
TN Visa for Citizens of Canada	14
Renewal (Extension) of TN Visa -- Canadian Citizen	15
Procedures for Obtaining a TN Visa -- Mexican Citizen	18
Procedures for Obtaining an H-1B Visa	19
Step 1. Obtain the State Wage Determination Form	20
Step 2. Obtain the U.S. Department of Labor Certification.	20
Step 3. Complete Forms I-129 and I-129W for Filing with USCIS	21
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.	26
Sample Letter Notifying USCIS that a Noncitizen is No Longer Employed in ARS	29
Adjusting Status of a J-1 to an H-1B	30
Information on Evaluation of Foreign Education	33

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>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>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>EMPLOYMENT AUTHORIZATION DOCUMENT (EAD), Form I-766</p>	<p>Some noncitizens are issued an I-766, Employment Authorization Document (EAD), by USCIS and may also be employed in an excepted service position.</p> <p>These noncitizens must be from a country on the "approved list." The EAD should be checked for expiration date. The not-to-exceed date for their appointment should not extend beyond the expiration date on the EAD which is normally good for one year.</p>
<p>F-1 STUDENTS SEEKING PRACTICAL TRAINING AS AN EMPLOYEE OF ARS</p> <p>EAD 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 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.</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 \$185 basic filing fee. (The basic filing fee increased to \$185 as of April 30, 2004.)</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 visas for potential employees are paid by the management unit. 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>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.</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>

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 Immigration and Naturalization Service),

<http://www.immigration.gov>

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.asp>

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

U.S. State Department,

General Website for 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_services.html#emp

Listing of Forms

DS-2019	Department of State form that replaced the IAP-66, Certificate of Eligibility for Exchange Visitors
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-129W	H-1B Data Collection and Filing Fee Exemption
I-539	Application to Extend/Change Nonimmigrant Status (for Family Members of Noncitizens whose H-1B or TN Visa is being extended)
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.

Updated 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 (as 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 July 1, 2004.

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.

Note: Countries shown in **bold** are newly added due to NATO expansion.

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. 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 or with an additional employer is not authorized and cannot begin until USCIS approval of the petition is received.

Renewal (Extension) of TN Visa -- Canadian Citizen

Renewals (extensions) of TN visas can be processed the same as obtaining the original TN visa as discussed previously or renewals (extensions) can be requested by filing an I-129 to the Nebraska Service Center.

Renewals (extensions) which are filed using Form I-129 to the Nebraska Service Center of USCIS require payment of fee of \$185. No Department of Labor certification requirements apply to a Canadian citizen in TN status who is seeking to renew (extend) that status. 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 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, Form I-539 should be used. 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.

Part 2 - Information about this Petition

1. TN
2. Check block B
3. TN
4. Check block C

Part 5 - Basic Information about the proposed employment and employer

Type of Petitioner: check "Organization"

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"

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

Form I-129 Supplement H

Follow instructions on form.

Under **Statement for H-1B specialty occupations and DOD projects** which says “As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation . . .” TYPE IN THE FOLLOWING “As a Federal agency, USDA, REE, ARS, does not have the authority to pay return transportation costs”. DO NOT SIGN OR DATE THIS SECTION.

Documentation to include with Form I-129 for a Canadian 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

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

Dear Sir/Madam:

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 a TN visa for Mexican citizens are very similar to the H-1B procedures which follow.

A Labor Condition application must be filed, ARS must file an I-129 at the appropriate regional office of USCIS, and after the petition is approved, the alien must apply for a non-immigrant visa at a U.S. Embassy or Consulate in Mexico. Reference http://travel.state.gov/tn_visas.html

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. Obtain the State Wage Determination Form

- * Request the prevailing wage rate forms from the Alien Labor Certification Office, State Employment Office, from the state where the noncitizen will be working.
- * Complete the form ensuring that it reflects that the position is an **entry level** research position under the **close** supervision of a research scientist. NOTE: ARS must pay at least 95% of what the state determines is the prevailing wage rate.
- * Return the complete forms to the State Employment Office. Some states will accept requests via fax -- check with the office. (This step may take 2-3 weeks.)

Step 2. Obtain the U.S. Department of Labor Certification.

- * Upon receipt of the prevailing wage rate from the State Employment Office, obtain the certification from the U.S. Department of Labor using Form ETA 9035, Labor Condition Application for H-1B nonimmigrants.

Submission can be done by one of three methods: online submission, facsimile transmission or by U.S. Mail. **Online submission is recommended.**

The form can be found on the Department of Labor website. Go to:

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

By LCA Online System Submission: It is strongly suggested that users read the Online Help Section “Getting Started” prior to completing and submitting LCA’s online. The online help provides step-by-step instructions for completing and submitting LCA’s electronically. Once DOL grants certification, print and sign the Form ETA 9035E. This form is filed with the I-129 to USCIS.

Some notes on completion of the form:

Section A. ARS Employer EIN Number is 72-0564834

Section C. 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

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

- * **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 Forms I-129 and I-129W 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

In the block for IRS Tax # state “N/A - Federal government agency”

Part 2 - Information about this Petition.

<i>Block #</i>	<i>Instruction</i>
1. Requested Nonimmigrant classification	H-1B1
2. Basis for Classification	Check block a. for initial H-1B request with ARS or Check block c. for change in employer for current H-1B
3. Prior Petition	Complete if the noncitizen worked for a different employer as an H-1B. Provide the petition number of the previous request (this is the “Receipt Number” documented in the upper left corner of the Notice of Action, Form I-797 from USCIS)
4. 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 .

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

Step 3. Complete Forms I-129 and I-129W for Filing with USCIS (continued)

Instructions for Completing Selected Portions of Form I-129, Application for a Nonimmigrant Worker (continued)

Part 3 - Information about the person(s) for whom you are filing for

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 will provide for purposes of the SF-52 completion or payment of recruitment incentives). “A#” is the alien number and can be left blank if they do not have one. 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.

Part 4 - Processing Information

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

- a. 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. If the noncitizen is already in the U.S., have notification sent to the Consul for their country in the U.S.
- e. **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 Supplement 1. **(NOTE: Extensions of family members are filed using form I-539.)**

Part 5 - Basic Information about the proposed employment and employer

Type of Petitioner: check “Organization”

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”

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

Step 3. Complete Forms I-129 and I-129W for Filing with USCIS(continued)

Form I-129 Supplement H

Follow instructions on form. Classification sought is H-1B1.

Under **Statement for H-1B specialty occupations and DOD projects** which says “As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation . . .” TYPE IN THE FOLLOWING “As a Federal agency, USDA, REE, ARS, does not have the authority to pay return transportation costs”. DO NOT SIGN OR DATE THIS SECTION.

Also complete Form I-129W, Petition for Nonimmigrant Worker Filing Fee Exemption

The form I-129W, (revised 2-14-02), must be submitted with the H-1B application package. This form is used to collect additional information about the H-1B nonimmigrant worker and the H-1B petitioner (the U.S. employer). Some special notes on completion of the form follow:

Some Notes on Completion of Form I-129W

Part A. General Information

Block 1, check “no” that ARS is not a dependent employer

Block 2, check “no” that the petitioner is not a willful violator.

Block 3, check “yes” that the beneficiary is an exempt H-1B nonimmigrant

Block 3a, check “no”

Block 3b, check “yes”

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

NAICS Code is 541710.

Part B. Fee Exemption Information

Answer all the questions in this part.

Block 3, check “yes”

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

Step 3. Complete Forms I-129 and I-129W for Filing with USCIS (continued) Some Notes on Completion of Form I-129W (continued)

Part C. Numerical Limitation Exemption Information

Answer all question in this part.
Block 3, check “yes”

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>

Form I-129

As of 4-30-2004, the fee for processing an I-129 is a flat rate of \$185.

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. Form I-907 (Request for Premium Processing Service) can be downloaded from the USCIS Web site, <http://uscis.gov/graphics/formsfee/forms/index.htm>, or can be obtained by calling the USCIS forms line, 1-800-870-3676 or the USCIS National Customer Service Center, 1-800-375-5283. Please note that some of the instructions on the printed forms are incorrect. **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.

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

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.
2. Form I-129W, "H-1B Data Collection and Filing Fee Exemption"
3. Filing Fee for I-129: check #____, dated _____, for \$____. (Note: this fee is paid by the management unit).

(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, include proof of U.S. equivalency and the transcript translated into English, if necessary), resume, copy of abstract of thesis, and listing of publications.
7. Letter from the supervisor stating why they wish to hire the noncitizen.
8. For noncitizens in the U.S. in another visa status, submit copies of previous I-94, Departure Record and Receipt, if applicable.

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

Sincerely,
Name
Title
Enclosures

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

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. Detach the lower tear-off portion of Form I-797 and give to the noncitizen.
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 page 8 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.

<i>Block #</i>	<i>Instruction</i>
1. Requested Nonimmigrant classification	H-1B1
2. Basis for Classification	Check block b. for an extension of H-1B
3. Prior Petition	Provide the petition number of the last ARS request (this is the "Receipt Number" documented in the upper left corner of the Notice of Action, Form I-797 from USCIS)
4. 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 must 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. 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 an H-1B status for **(NAME)** as a nonimmigrant worker.

1. Form I-129, "Petition for a Nonimmigrant Worker", including Supplement H.
2. Form I-129W, "Petition for Nonimmigrant Worker Filing Fee Exemption"
3. Filing Fee for I-129: check #____, dated _____, for \$_____. (Note: this fee is paid by the management unit).
4. Approved Labor Condition Application Form, ETA-9035.
5. Letter from the supervisor describing the need for the continuing employment of the noncitizen.
6. Copies of the Form I-94, Departure Record.

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>
-------------	-------------------	--

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://www.travel.state.gov/waiver_instructions.html

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 (continued)

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. Form I-129W, "Petition for Nonimmigrant Worker Filing Fee Exemption"
3. Filing Fees for I-129: check #____, dated _____, for \$ _____. **(Note: this fee is paid by check by the management unit).**
(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>