

UC San Diego
**International Students
& Programs Office**

UC San Diego
**International Faculty
& Scholars Office**



OPT and Beyond: Navigating the U.S. Immigration System

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***Disclaimer : Any information in this seminar does not constitute legal advice and is for informational purposes only. For legal opinions, please schedule a consultation with an immigration attorney. We also recommend you schedule an appointment with your ISPO or IFSO Advisor at UC San Diego or contact your F-1 International Student Advisor for your F-1 program sponsor.**

This presentation provides general information only and cannot substitute for individualized legal advice about your particular case. In the world of immigration, very small factual differences can make a huge difference in your case.

Session Overview

- F-1 OPT
- F-1 STEM OPT
- H-1B Status (cap-subject employers)
- H-1B Alternatives
- Other types of work visas
- H-1B Status (cap-exempt employer sponsorship at UC San Diego)

F-1 Optional Practical Training (OPT)

- F-1 Optional Practical Training (OPT)
 - Employment in Field of Study
 - Extension of F-1 Status
 - 12 months of standard OPT, usually taken after graduation

F-1 STEM OPT

- F-1 STEM (Science, Technology, Engineering, Math) OPT
 - 24 additional months
 - STEM field (CIP code)
 - E-Verify employer
 - I-983 Training Plan
 - Evaluations and Reporting
- stemopt.ucsd.edu

General Matters

- **DON'T** get advice from friends or relatives.
- **NEVER** consult a non attorney for immigration advice (including your academic advisor or a *notario*).
- **ONLY** get advice from your international office or a qualified, experienced immigration attorney.
- **ALWAYS** follow the advice of your international office.

If You Want to Stay in US...

1. Complete degree, in field ***in demand*** in US (talk to Career Services early and often!).
2. Don't miss out on OPT (Including STEM).
3. Get good job with good company (use Dunn & Bradstreet). Find out their policies on sponsorship prior to accepting job.
4. Get work visa (usually H1B). Your employer must include you in March registration every year!
5. Convince company you are indispensable; they will sponsor for green card.

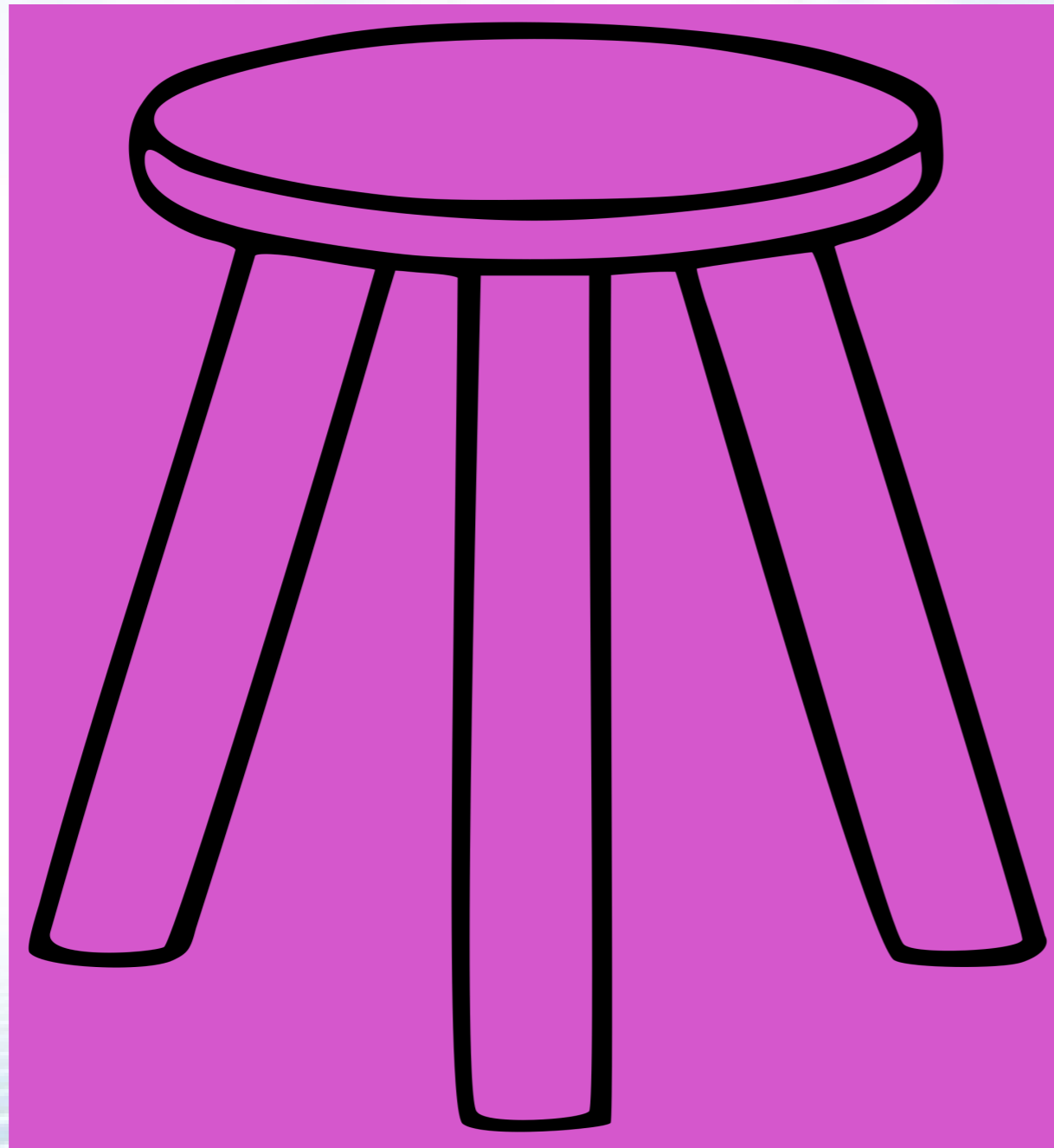


The Work Visa You Want: H1B

- H1B is the principal immigration status available for persons temporarily working in professional level jobs (“specialty occupations”) in the US.
- Who sponsors?
 - www.immihelp.com/hib-sponsoring-companies-database/



H1B Basics: Three Legged Stool



1. You possess degree.
2. Job requires same or very similar degree.
3. Employer willing to pay required wage, filing and attorney's fees.

Any of three missing: no H1B!



FLC Data Center Search

- You selected the **All Industries** database for 7/2021 - 6/2022.
- Your search returned the following: [Print Format](#)
- **Area Code:** [26420](#)
Area Title: **Houston-The Woodlands-Sugar Land, TX**
- **OES/SOC Code:** 15-1132
OES/SOC Title: Software Developers, Applications
GeoLevel: 1
Level 1 Wage: \$36.44 hour - \$75,795 year
Level 2 Wage: \$44.56 hour - \$92,685 year
Level 3 Wage: \$52.69 hour - \$109,595 year
Level 4 Wage: \$60.81 hour - \$126,485 year
Mean Wage (H-2B): \$52.69 hour - \$109,595 year



More Employer Obligations

- Must offer to pay the H1B's return transportation to country of nationality if involuntarily separated before end of approved visa petition.
- Must notify other workers of terms of job including salary (two 10-day postings or letter to union).
- Must pay attorney's fees, if any.
- Must pay USCIS fees.



What Are the Fees?

- Regular filing fee: \$460
- “Anti fraud” fee: \$500
- ACWIA fee: \$1500 (if 26 or more FT employees) or \$750 (if 25 or fewer)
- Filing fee for dependents: \$370.
- Premium fee: \$2500—15 day processing
- Attorney’s fees: vary widely: no standard amount.



Who Pays for What?

- A series of judicial decisions now makes clear that the employer **must pay all costs and fees** required to get the employee on the payroll.
- Employer could incur huge liabilities if they don't pay.
- What to do if they don't want to pay? Have them discuss issue with experienced immigration attorney.
- Note: employer **not responsible** premium fee if desired for personal reasons or **dependents**.



How does the Lottery Work?

- Employer registers with USCIS and names employees who it would like to include in the H1B lottery in **March (this year 3/1-3/18)**.
- Note: USCIS generally views more than one employer registering the same person as **FRAUD**.
- Then in a few weeks, USCIS will inform employer which employees have “won” the lottery.
- Then, for a 60 day period, the employer can file complete H1B packet with USCIS (next slide), hopefully prior to end of your OPT.
- More lottery winners can be announced later.
- H1B status, if petition approved, **does not take effect until October 1**.



If Selected in Lottery, What Must be Filed?

- First is Labor Condition Application (LCA). Filed electronically with Department of Labor. Takes about seven business days to be approved. **May take longer if employer has never filed.**
- Next is H1B Petition, together with LCA, evidence of your qualifications, info about employer, job, filed at a USCIS Service Center.
- If you are maintaining lawful status in US, your status is changed to H1B, along with family members. **Current or former J? You may have issues.**
- If outside US, or traveling following change of status, you must obtain H1B visa at US consulate, unless going for 30 days or less to Canada or Mexico.



Finally! Approval!

- Processing of the H generally takes three to seven months, or 15 days with premium processing.
- **H1B status does not take effect until October 1.**
- Once approved and October 1 has passed, the H employee may “port” to a new employer once that employer *files* a new petition. Approval of new petition is not necessary to “port”.
- BEWARE: “porting” is difficult if you have not been counted against the quota.



The Cursed Quota

- How many H visas are made available per year?
 - Currently H1B's are limited to about 78,200 per fiscal year.
 - ~58,200 for those with no US earned Master's.
 - 20,000 for those with US earned Master's or higher.
 - ~6,800 reserved for citizens of Chile, Singapore (H1B1—available all year).



Quota Statistics

- 2012: Masters, June 7; regular June 11.
- 2013: both caps exhausted on April 5; lottery.
- 2014: both caps exhausted on April 7; lottery.
- 2015: both caps exhausted on April 7; lottery.
- 2016: both caps exhausted on April 7; lottery. 236K + petitions received.
- 2017: about 199K petitions received; lottery.
- 2018: about 190K petitions received; lottery.
- 2019: about 201K petitions received; lottery.
- 2020: about 201K petitions received; lottery x 2.
- 2021: about 275K petitions received; lottery x 3.
- So, in other words, it is likely there will be a lottery for H visas every year.
- Extremely important not to miss even one H cycle, even if on STEM extension. Stay on top of this!!



Who's Exempt from Quota?

- Persons *already counted against quota within past six years.*
- persons who work in higher education.
- Employees of nonprofit **research** and government **research** organizations.
- Persons who work in nonprofit with written affiliation with an institution of higher education (eg, some K-12 schools).
- **Note that most government entities and nonprofits are NOT exempt from quota.**
- Those who work “at” rather than for a quota exempt employer, that is on physical premises of employer.
- Persons engaged in concurrent quota exempt/quota subject jobs, that is working simultaneously for quota exempt and quota subject employers.



So Called “cap gap” OPT

- In April, 2008, in order to assist students caught by the H1B quota, USCIS created so called “cap gap” protection which automatically extends OPT and F status through September 30 of any year, if:
 - Your employer properly filed an H1B petition on your behalf prior to the expiration of your OPT (not just registration);
 - The H1B petition is subject to the quota and shows a start date of October 1.
 - Cap gap OPT ends midnight September 30.
 - **If the H petition is filed during your grace period, after expiration of OPT, then the “cap gap” extends status only, but not work authorization.**
- In order to fully document the “cap gap”, you should seek a “cap gap” I 20 from his/her school.



Travel While In “Cap Gap”

- You should not travel while in the cap gap as you will have no valid EAD card (despite advice on some websites). Reentry to the US on OPT generally requires:
 - I 20 endorsed for travel
 - Valid passport and F 1 visa (unless visa exempt)
 - ~~Valid EAD card (no EAD during cap-gap!)~~
 - Employment letter



Can I get an H Through My Own Business?

- To be an H1B employer, an entity usually must have at least one employee other than the H1B.
- Must have independent Board of Directors that can discipline or fire the H1B.
- Company must be able to pay required wage.
- **Despite meeting all these requirements, very difficult to get a “self employed” H petition approved.**
- Bottom line: don't try it.



H1B Workarounds

- If not chosen in the H1B lottery, and OPT is ending:
 - **Day One CPT**. Enrollment in new course of study and getting “Day One CPT”. Make sure program reputable! Try Harrisburg University or Ottawa University.
 - **H-3 trainee**. 2 yrs max; training must be for job abroad, unavailable back home. Not primarily On the Job Training (OJT). No dual intent.
 - **J-1 trainee**. 18 mos max; graduate with one year experience or five years experience in occupation. No dual intent.
 - **L-1 transferee**. If employer has international operations, work abroad for one year, then employer can bring you back on an L visa.

Are There H Alternatives?

- **TN (Treaty NAFTA)** for citizens of Canada and Mexico only. Occupations listed at 8 Code of Federal Regulations Sec. 214.6(c) mostly require a minimum of Bachelor's degree, except Scientific Technician/Technologist.
- MBA's beware: "Management Consultant" is carefully scrutinized; generally must be independent contractor.
- TN given in three-year increments; requires residence abroad (no dual intent).



H Alternatives?

- **H1B1 visa for Chile, Singapore**: very similar to normal H1B, except granted in one-year increments, requires residence abroad (no dual intent).
- **E 3 for Australian citizens**; again very similar to H1B; two-year increments; minimum Bachelor's, no dual intent; spouses may work.
- **J-1** professor/researcher, “specialist”, short term scholar, **K-12 teacher**, camp counselor, summer work-travel, physician, trainee.



Alternatives?

- **O-1** person of extraordinary ability/achievement; very high evidence requirements.
- **E 1/E 2**: if your country of nationality has an trader/investor treaty with US, investment of as little as 50K in a job-creating business can mean a visa for life, work permit for spouse (or work as an “essential employee” for an investor company). See if your country is covered:
 - <http://travel.state.gov/content/visas/english/fees/treaty.html>
 - Also note E can be H workaround.
- **L 1A/L 1B**: possible if you were employed by a company abroad for at least a year before coming to the US, and they wish to employ you in US; work permit for spouse. Can sometimes work for entrepreneurs.
 - Also note that the L 1 category can be a workaround.



About the Speaker



David Ware has over 39 years experience in representing universities and their students, faculty, and staff, as well as companies and individuals. His firm is one of only a handful in the nation with a consistent focus on academia, while also handling business, family, removal, asylum, and nationality cases. He has for many years been selected to the Bar Register of Preeminent Lawyers and has been selected as one of the Best Lawyers in America since 2000. For ten years, Mr. Ware has been selected as among the top immigration attorneys in Louisiana by New Orleans Magazine, and in 2005 and 2008, City Business Magazine selected him as one of the top 50 “Leaders in Law” in Louisiana, the only immigration attorney so chosen. In 2008, he was elected to Who’s Who International’s Top Corporate Immigration Attorneys – one of only 300 in the US and the only in Louisiana. He is also top rated by AVVO and US News and World Report. Mr. Ware is a national authority in practice areas of interest to universities, and he currently serves as a mentor in these areas for other immigration attorneys through AILA. He has been active in NAFSA since 1985. In addition to holding several AILA and NAFSA leadership positions, he has received numerous awards for outstanding service. He regularly serves as an expert speaker and author for both AILA and NAFSA national and regional conferences, and at the meetings of other academically-oriented organizations such as AIEA, NACE, CUPA, NACUA and the Federal Bar Association. He serves on the Board of the Immigration Law Section of the Federal Bar Association and was chosen the FBA’s Lawyer of the Year in 2017. He was recently Chair for the second year, of an AILA conference in Europe.



WARE | IMMIGRATION

H-1B Status at UCSD

- UCSD is cap-exempt as an institution of higher education
- UCSD department sponsorship is the first step
- See [PPM 200-16](#) for list of eligible UCSD positions
- Department HR helps prepare H-1B department request and submits to International Faculty & Scholars Office (IFSO), preferably several months in advance, recommended 7-8 months in advance.
- Must have **H-1B approval notice** to continue working once F-1 OPT or STEM OPT EAD or J-1 DS-2019 expires.
- Important note: All H-1B fees **MUST** be paid by the sponsoring department. Fees are not rechargeable to the international scholar and scholars cannot reimburse the department for these fee

JOB TITLES AND VISA SELECTION
Academic Titles

Paid			
Teaching and Research	J-1	H-1B	PR
Acting Professor Series	N	Y	N
Adjunct Professor Series	Y	Y	Y ¹
Professor Series	N	Y	Y
Professor In Residence Series	N	Y	Y ¹
Visiting Adjunct Professor Series	Y	E	N
Visiting Professor Series	Y	E	N
Teaching			
Lecturer with Security of Employment Series (Academic Senate)	N	Y	Y
Lecturer Series (Non-Senate)	Y	E	N
Research			
Junior Specialist	Y	N	N
Postdoctoral Scholar-Employee	Y	E	N
Postdoctoral Scholar-Fellow	Y	N	N
Project Scientist Series	Y	E	Y ¹
Research Scientist Series	Y	E	Y ¹
Specialist Series (excluding Junior)	Y	E	N
Visiting Project Scientist Series	Y	E	N
Visiting Research Scientist Series	Y	E	N

Key:

- Y = Eligible
- Y¹ = Only with permanent appointment (intent)
- E = Exception only
- N = Not eligible

Only certain appointment titles at UC San Diego are eligible for H-1B sponsorship, per institutional policy.

*Departments may have internal policies on visa sponsorship. Requires department chair approval.

Additional Titles in Health Sciences

Paid				
	J-1	H-1B	PR	
Clinical Lab Scientist Series	N	Y	N	
Clinical Lab Scientist, Specialist	N	Y	N	
Clinical Lab Scientist, Manager	N	Y	N	
Professor of Clinical "X" (e.g. Medicine) Series	N	Y	Y ¹	
Clinical Professor Series	N	Y	Y ¹	
Non-Physician Clinical Trainee	N	Y	N	
Resident Physician (clinical) MD degree	ECFMG	E	N	
Senior Clinical Fellow (clinical) MD degree	ECFMG	E	N	
(Staff) Physician Series	N	Y	N	

Key:

- ECFMG = DS-2019 for J-1 status issued by Educational Commission for Foreign Medical Graduates
- Y = Eligible
- Y¹ = Only with permanent appointment (intent) verified by VCHS School of Medicine Dean's Office
- Y² = Only with approval of Dean of Medical Education
- E = Exception by VCHS Associate Dean of Medical Education
- N = Not eligible

Non-Paid				
	J-1	H-1B	PR	
Clinical Affiliate	Y ²	N	N	

Staff Titles

Research			
	J-1	H-1B	PR
Clinical Research Coordinator, Assistant Clinical Research Coordinator	Y	N	N
Clinical Research Coordinator, Senior	Y	Y	N
Research and Development Engineer, P 3-5, S 1-2, M 1-2	E ¹	E ¹	N
Bioinformatics, P 3	Y	Y	N
Bioinformatics, P 4-5, S 2, M 1	Y	Y	Y ¹
Computational and Data Science Research, P3	Y	Y	N
Computational and Data Science Research, P 4-5, S 2, M 1-3	Y	Y	Y ¹
Geographic Information Systems, P 3-4, S 2	Y	Y	N
Information Technology matrix, other titles, P 3 and above	N	E ¹	N
Staff Research Associate I and II	Y	N	N
Staff Research Associate III and up	Y	Y	N
Animal Care, P 3-5, S 1-2, M 1-3	N	Y	N
Field Researcher, P 3-4, S 1-2, M 1	Y	Y	N
Clinical Researcher Human Subjects, P 4-5, S 1-2, M 1-2	Y	Y	N
Lab Instruction Supervisor, S 1-2	Y	Y	N
Lab Research Supervisor, S 1-2	Y	Y	N
Survey Researcher, P 3-4, S 1-2, M 2	Y	Y	N
Academic or Research Program Manager, P 3-5, M 1-2	E ²	E ²	N
Research Data Analyst, P 3-5, S 2, M 1	Y	Y	N

Key:

- Y = Eligible
- Y¹ = Eligible with permanent intent and only through Employment-based first preference or National Interest Waiver pathways
- E = Exception by Human Resources (only research-related positions)
- E¹ = Exception by Human Resources (only research-related positions)
- E² = Exception by Human Resources Compensation and Classification team (only research related positions) with approval by Visa Policy Committee
- N = Not eligible

[UCSD's visa sponsorship policy](#)
[PPM 200-16](#)

CONTINUED	
J-1 EXCHANGE VISITOR STATUS	H-1B TEMPORARY SPECIALTY WORKER STATUS
Funding sources that academic departments use for J-1 scholars may be mixed and complex—e.g., from UCSD and/or a grant and/or other organizations, etc.	H-1B Specialty Workers must be paid from UCSD sources ONLY, as salaried employees, with income and payroll taxes withheld.
J-1 scholars typically can accept whatever pay is offered by their academic departments. If not enough to cover living costs, then they must also show other sources of support to cover all costs they are expected to incur while working here at UCSD.	H1B scholars must be paid the prevailing wage rate as determined for the occupation in the metropolitan statistical area.
When applying for a J-1 Exchange Visitor visa, scholars must show ties to their home countries that demonstrate that they will return once their appointment at UCSD is completed.	When applying for an H-1B visa, scholars are not required to show ties to their home countries.
Some J-1 scholars (depending on funding and US government agreements with scholar's government) may be subject to the two-year home country physical presence requirement 212 (e). This means that once the J-1 appointment is completed, scholars must go back to their home countries for at least two years. Although the two-year home residency rule prevents individuals from qualifying for H, L, or Permanent Residency statuses (until satisfying or waiving the two-year rule), it does not prohibit entry to the U.S. in other statuses for short-term visits. J-1 scholars who find that they are subject to the two-year requirement (see an International Faculty & Scholar Advisor about this when you first come to UCSD) may apply to have this requirement waived. Scholars from most countries (including China, India, and South Korea) are able to get waiver applications approved in about six months. Almost all waiver applications are successful. If the application to waive is done soon after arrival in the USA, for most scholars the two-year rule can be waived in advance of the time needed to do a change of status to H-1B status if it should be needed.	The two-year home residency rule can be applied ONLY to those in J-1 status—not H-1B status. To be eligible for H-1B status, scholars must not have 212 (e) the two-year home residency rule pending.
Scholars may hold J-1 status for up to five years. Except for tenure-track or tenured faculty positions, for which J-1 status is proscribed, scholars with long-term plans to apply for Permanent Residency often find J-1 status extremely valuable. Starting in J-1 status and then changing to H-1B offers scholars an extra five years to achieve accomplishments, establish extensive documentation in support of academic excellence, and to be offered a position at UCSD that the institution might sponsor for Permanent Residency.	Scholars may hold H-1B status for up to six years (initial status for three years with a three-year extension). Except for tenure-track or tenured faculty positions, scholars with long-term plans to apply for Permanent Residency often find that bypassing J-1 status and going directly to H-1B does not allow them enough time to accumulate achievements, recognition, or the right job offers. Thus, they may not receive institutional support when trying to apply for Permanent Residency, and may pay \$5,000 to \$10,000 for a private attorney.

MEMORANDUM OF UNDERSTANDING TO BYPASS J-1 STATUS FOR H-1B

Signature required if submitting an H-1B Initial Request before completing 5 years of J-1 status.
By signing this statement, it is understood that you have read the above comparison chart and realize that one may be foregoing significant benefits by not completing 5 years in J-1 status in order to directly apply for H-1B status. Further, it is understood that H-1B status has a 6-year limit and that UCSD has a strict Permanent Residency (PR) policy (see UCSD PPM 200-16 for more information on PR sponsorship.) Therefore, one may have very limited opportunities to remain in the U.S. after the expiration of H-1B status.

Scholar Name

UCSD Supervisor Name

For a comparison of J-1 vs H-1B, see IFSO website at:

<http://ifso.ucsd.edu/dept-facilitators/h1b/index.html>

Most international researchers come to UC San Diego in J-1 Exchange Visitor status, which affords them additional time to build up a strong case for permanent residence, if this is an ultimate intention; in addition, H-1B petitions are very labor-intensive and expensive. To bypass the J-1 classification, please have the scholar read J-1 or H-1B: A Comparison (PDF), and sign the bottom of page 2, and submit with the H-1B initial request. This form is not needed if the scholar is currently in J status or is ineligible for J status.

Costs

Your department is responsible for paying all of fees for your petition.

IFSO Processing Fees	
\$2,756	IFSO Service Fee (Recharge Form)
\$772	IFSO Rush Processing (Recharge Form)

USCIS Filing Fees	
\$460	I-129 Petition Processing Fee (Check)
\$500	Fraud Detection & Protection Fee (Check)
\$2,500	Premium Processing Fee (Check) Required for new H-1B petitions due to lengthy USCIS processing times <i>Highly recommended, but optional for Port/Extension cases</i>

Estimated costs \$6,220 + 7,000 incidental FedEx mailing costs

See website for [processing time considerations](#)

****In certain situations, the scholar may pay for premium processing****



Processing Times

Departments are encouraged to submit requests to IFSO 7-8 months prior to the anticipated start date. (IFSO cannot submit petition the LCA until 6 months prior to start date per federal regulations).

2 MONTHS

Complete H-1B requests

IFSO Processing

Review immigration history

File Labor Conditions Application (LCA) with Department of Labor (DOL)

Coordinate with department to post DOL notice at worksite(s)

Complete USCIS Form I-129 and supplemental forms

6.5 to 8.5 MONTHS OR 15 DAYS

USCIS Processing

Review immigration history

USCIS can issue a request for evidence (RFE)

2-3 WEEKS

Mailing Approval Notice

USCIS mails approval notice to IFSO via USPS (regular mail)

USPS delivers to main campus mail office, who then delivers to IFSO

9-11
Months Total
with regular
processing

2-3
Months Total
with premium
processing

**15 calendar days
with premium processing**

Documents Required

- **Online forms in International Scholar Dossier (ISD) database**
- **Degree/diploma, *highest degree earned***
 - **U.S. degree:** Degree needs to state the field of study.
 - Transcripts if major field not listed
 - **Foreign degree.** Submit a Foreign Educational **Credentials Evaluation.**
- **Curriculum Vitae (CV)**
- **Passport biographical page**
- **Immigration Documents**
 - I-94
 - Visas
 - Entry Stamp
 - Current Status Documents
ex. J-1 DS-2019s or F-1/I-20 and EAD cards
- **Earnings statements**

H-1B Request Through ISD

Instructions

Your Information

- Edit Personal Information
- Attach Documents
- Review and Submit to Department

Refreshing the page logs you out from the Visitor application.

Visitor : Lucas OLSON
Campus ID :
Academic Department : AH: Literature
Processing Stage : Pending Visitor Data Entry

Documents

Biographical

Address

Appointment

Position In Home Country

Passport And Visa

Other

Biographical Information

Save

Reset

Biographical Fields Data

Passport Name

Use ALL CAPITAL LETTERS for your family name; only capitalize the initial letter of your given name(s). Example: John SMITH

Passport Last Name OLSON

Passport First Name Lucas

Passport Suffix

Preferred Name

Preferred Last Name

Preferred First Name

Birth Information

Date of Birth

City and province/State of Birth

Country of Birth

Country of Citizenship

Country of Legal Permanent Residence

Find Your Path To an International Career



Canada's Express Entry Program

February 9, 12:00-1:00pm

Have you ever wondered about working & living in Canada and wanted to learn more about the process?

Top companies like Google and Microsoft recruit international talent for their Canadian offices. The Express Entry program provides a pathway to permanent residence in Canada.

International students who are interested in exploring post-OPT options are encouraged to attend.

Register on Handshake:

https://app.joinhandshake.com/events/928057/share_preview



QUESTIONS?
THANK YOU!



Contact Information

- **International Students and Programs Office**
 - UCSD students and grads
 - Website: lstudents.ucsd.edu
 - e-mail: iemployment@ucsd.edu
- **International Faculty and Scholars Office**
 - UCSD scholars and faculty
 - Website: ifso.ucsd.edu
 - e-mail: ischolars@ucsd.edu
- **Ware Immigration,**
 - Website: <https://www.david-ware.com/>
 - contact: <https://www.david-ware.com/contact/>

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