

FAQ: H-1B Transfers - When Can the Candidate Start?

These FAQs answer several of the questions that we receive from employers and candidates when transferring an H-1B visa holder, also known as the “change of employer” process.

1. We made an offer to a candidate who requires an H-1B transfer. When can they start?

A general estimated timeframe is about 4-6 weeks from initiation of the case, taking into account the factors below:

- a. The time it takes for the employer and candidate to provide the initial required documents and information, and return forms with signatures. Typically, this takes 2-3 weeks.
- b. The Department of Labor (DOL) processing of the Labor Condition Application (LCA), which is required prior to filing all H-1B petitions. Typically, this takes 7 to 10 days.
- c. Whether the employer and candidate wish to start employment based on USCIS’ receipt of the H-1B petition or upon receipt of the approval (which can be done via premium processing or regular processing depending on availability of the process, costs and other factors).
- d. At what point is the candidate comfortable giving “notice” to the current employer.
 - One approach is to wait for the USCIS approval of the petition to give notice.
 - The other possible approach is for the candidate to give notice upon USCIS’ confirmation of receipt of the petition.

Typically, candidates give 2-3 weeks’ notice. See also #2, 3 and 4 below.

Of Note: If it is determined to wait for USCIS’ approval of the petition to give notice and the petition is filed for regular processing, both the candidate and employer should be aware that the start date could be 4-6 months from the date the H-1B petition is filed. In this instance, premium processing should be considered which involves an additional government filing fee of \$2,500 to bring the petition to the front of the line for adjudication within 15 days of filing.

***This material is not intended to substitute as legal advice.**

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2. When should the candidate give notice?

We recommend that notice not be given until at least the petition has been filed with USCIS. Depending on the facts of the case, it is preferable to wait until USCIS’ approval which might require consideration of using Premium Processing for an additional government fee.

3. Can the candidate begin work based upon filing of the H-1B petition, USCIS’ receipt notice, or wait for an actual approval?

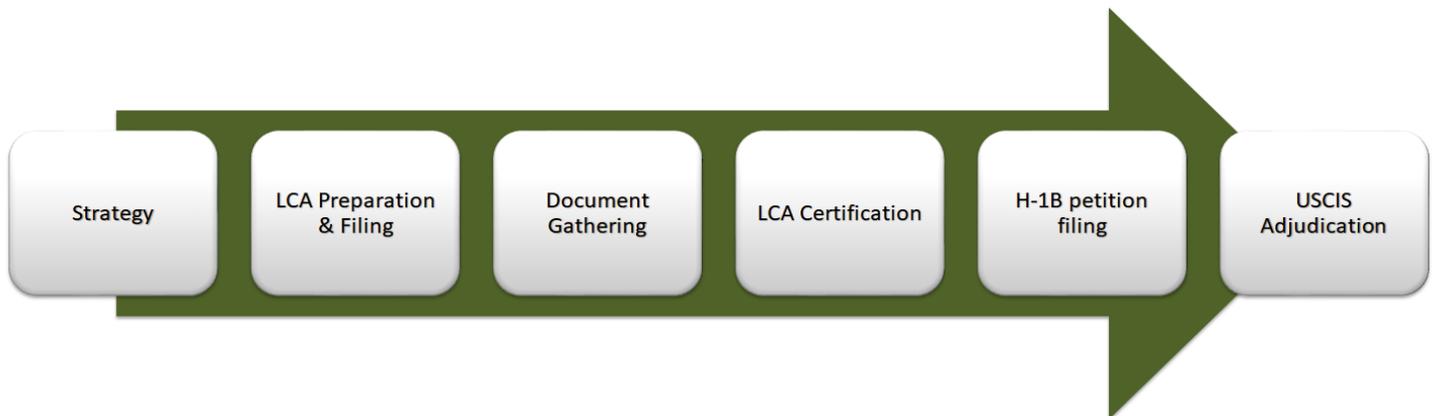
The law allows H-1B transferring employees to start to work for a new employer upon filing the H petition with the USCIS. This “filing” may be established with FedEx or UPS confirmation of delivery of the petition. However, a FedEx or UPS confirmation is no indication that the petition has been accepted for processing, and considering the risks involved of unauthorized employment, it is recommended that the candidate does not begin work based on FedEx or UPS confirmation.

It is recommended to wait until USCIS issues a receipt (electronic or paper) or at a minimum, there is confirmation that USCIS has cashed the filing fees. This typically takes 4-7 days to 1 to 2 weeks depending on the Service Center and adjudicator.

The H-1B foreign national may begin work for the new H-1B employer before receiving approval of the new H-1B petition. However, this is a strategic decision that should be made considering various factors and the team.

4. What requirements must an H-1B holder meet in order to begin work with a new employer based on the receipt of a change of employer/extension petition by the USCIS?

The main requirements are that the candidate: 1) has not been employed without authorization (this could mean even one day of unauthorized employment); 2) has been issued H-1B status previously; 3) has been lawfully admitted to the United States; and 4) the facts of the case and petition are strong.



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5. What are the consequences if the USCIS denies the case after the foreign national has started work for the new employer based on USCIS receipt of the petition?

If USCIS denies the H-1B petition, work authorization for the individual immediately ceases as of the date of the USCIS denial decision. The individual may then be required to plan to leave the country or change to another status to avoid jeopardizing a future ability to work or immigrate.

6. How likely is it that the H-1B transfer will be denied?

We make every effort to file a strong petition based on the employer's background and the candidate's talent and skills. The chance of a USCIS denial is minimal, but possible.

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