

## H-1B Data Collection & Filing Fee Exemption

### Purpose of This Form.

On October 21, 1998, Congress enacted the American Competitiveness and Workforce Improvement Act ("ACWIA"), Public Law 105-277 that modified the H-1B nonimmigrant program. This form is an addendum to Form I-129, Petition for a Nonimmigrant Worker. This form will be used to collect additional information about the H-1B nonimmigrant worker and the H-1B petitioner (U.S. employer). This addendum will also be used to determine whether the H-1B petitioner is exempt from the additional filing fee of \$500 imposed by ACWIA.

### Who is Required to File.

A United States employer seeking to classify an alien as an H-1B nonimmigrant worker must file this form concurrently with Form I-129 and the appropriate fee.

### Payment of the Fee.

A United States employer filing an H-1B petition must submit the \$110 filing fee and, unless exempt under Part B of this form, the additional \$500 fee. Payment may be in the form of a single check for \$610, or it may be submitted as two checks, one for \$110 and one for \$500, filed at the same time.

### General Filing Instructions.

#### Part A.

All United States employers seeking to classify an alien as an H-1B nonimmigrant worker must complete Part A of this form.

- **Highest educational level.** Place an "x" in the appropriate box (*a through i*) that is most closely related to the highest formal education level attained by the beneficiary. DO NOT consider work experience in determining the beneficiary's equivalency to formal education.
- **Major/Primary field of study.** Use the beneficiary's degree transcripts to determine the primary field of study. Once the beneficiary's major is determined, fill in the boxes with one character per box. Thirty (30) characters maximum. DO NOT consider work experience to determine the beneficiary's major education level.
- **Rate of pay per year.** The "rate of pay" is the salary or wages paid to the beneficiary. Salary or wages must be expressed in an annual full-time amount and do not include non-cash compensation or benefits. For example, an H-1B worker is to be paid \$6,500 per month for a 4-month period including a health benefits package and transportation. The yearly rate of pay if he or she were working for a full year would be 12 times the monthly rate or \$78,000. This amount does not include health benefits or transportation costs. The figure \$78,000 should be entered on this form as the rate of pay.
- **LCA Code.** The LCA Code is a three-digit occupational group for professional, technical, and managerial occupations and fashion models that can be obtained from Appendix 2 of the Dictionary of Occupational Titles printed on Department of Labor ETA Form 9035 Labor Condition Application for H-1B Nonimmigrant.
- **NAICS Code.** The North American Industry Classification System (NAICS) code can be obtained from the Department of Commerce, U.S. Census Bureau ([www.census.gov/epcd/www/naics.html](http://www.census.gov/epcd/www/naics.html)). Enter the code from left to right one digit in each of the six boxes. If you use a code, which is less than six digits, enter the code left to right and then add zeros in the remaining unoccupied boxes.

The code sequence 33466 would be entered as:

3	3	4	6	6	0
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The code sequence 5133 would be entered as:

5	1	3	3	0	0
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#### Part B.

A U.S. employer seeking an exemption from the \$500 filing fee must complete Part B. A U.S. employer is exempt from payment of the additional \$500 filing fee if:

- The employer is an *institution of higher education* as defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a); or

- The employer is a *nonprofit organization or entity related to, or affiliated with an institution of higher education*. Institutions of higher education are defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a). Such a nonprofit organization or entity includes but is not limited to hospitals and medical or research institutions. “Related to”, or “affiliated with” means the entity is (a) connected or associated with the institution of higher education through shared ownership or control by a board or federation operated by the institution of higher education, or (b) attached to the institution of higher education as a member, branch, cooperative, or subsidiary. “Nonprofit organization or entity” means the organization or entity is (a) defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4) or (c)(6); 26 U.S.C. section 501(c)(3), (c)(4) or (c)(6), and (b) has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service; or
- The employer is a *nonprofit research organization or governmental research organization*, that is primarily engaged in basic research and/or applied research. “Nonprofit organization or entity” means the organization or entity is (a) defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6); 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and (b) has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service. A government research organization is a United States Federal government entity whose primary mission is the performance or promotion of basic research and/or applied research; or
- This petition is the second or subsequent request for an extension of stay filed by the employer regardless of when the first extension of stay was filed or whether the \$500 filing fee was paid on the initial petition or the first extension of stay; or
- This petition is an amended petition that does not contain any requests for extension of stay filed by the employer; or
- This petition is to correct an Immigration and Naturalization Service error.

#### **Evidence Requirement.**

What evidence is required under Part B?

- United States employers claiming exemption from payment of the \$500 filing fee on the basis of status as (a) a nonprofit organization or entity related to, or affiliated with an institution of higher education, or (b) as a nonprofit research organization must submit evidence of tax exempt status under the Internal Revenue Code of 1986, section 501(c)(3), (4) or (6), 26 U.S.C. section 501(c)(3), (c)(4) or (c)(6); or
- All other United States employers claiming exemption from payment of the \$500 filing fee must submit a statement describing why the organization or entity is exempt.

#### **Refund of filing fee.**

The filing fee of \$110.00 may be refunded **only in the instance of Service error**. To apply for a refund, write to the Immigration and Naturalization Service Office where the petition was filed. Please include a detailed explanation of the circumstance which you believe justifies a refund of fee. There is no provision for the refund of the \$500 additional filing fee.

#### **Authority.**

The authority to collect this information is contained in ACWIA. Failure to provide all requested information may delay the final decision or result in denial of your request. The Immigration and Naturalization Service will use the information to determine eligibility for the benefit requested, and may provide other agencies with the information.

#### **Public Reporting Burden.**

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is 30 minutes per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service 425 I Street, N.W., Room 5307, Washington, DC 20536. **(DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS)**.

# H-1B Data Collection & Filing Fee Exemption

Petitioner's Name:

## PART A. General Information

Beneficiary's Last Name  First Name  Middle Name

Attention To or In Care Of  Current Residential Address - Street  Apt. #

City  State  Zip Code

**Beneficiary's Highest Level of Education.** Please check only one box.

- a. NO DIPLOMA
- b. HIGH SCHOOL GRADUATE – high school DIPLOMA or the equivalent (*for example, GED*)
- c. Some college credit, but less than one year
- d. One or more years of college, no degree
- e. Associate's degree (*for example: AA, AS*)
- f. Bachelor's degree (*for example: BA, AB, BS*)
- g. Master's degree (*for example: MA, MS, MEng, MEd, MSW, MBA*)
- h. Professional degree (*for example: MD, DDS, DVM, LLB, JD*)
- i. Doctorate degree (*for example: PhD, EdD*)

Major/Primary Field of Study

Rate of pay per year  LCA Code  NAICS Code

## PART B. Fee Exemption Information

In order for the Immigration and Naturalization Service to determine if you must pay the additional \$500 fee, please answer all of the following questions:

- |    | Yes                      | No                       |                                                                                                                                                                                                                                                   |
|----|--------------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | Are you an institution of higher education as defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a)?                                                                                                             |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | Are you a nonprofit organization or entity related to or affiliated with an institution of higher education, as such institutions of higher education are defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a)? |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | Are you a nonprofit research organization or a governmental research organization, as defined in 8 CFR 214.2(h)(19)(iii)(C)?                                                                                                                      |
| 4. | <input type="checkbox"/> | <input type="checkbox"/> | Is this the second or subsequent request for an extension of stay that you have filed for this alien?                                                                                                                                             |
| 5. | <input type="checkbox"/> | <input type="checkbox"/> | Is this an amended petition that does not contain any requests for extension of stay?                                                                                                                                                             |
| 6. | <input type="checkbox"/> | <input type="checkbox"/> | Are you filing this petition in order to correct a Service error?                                                                                                                                                                                 |

If you answered **YES** to any of the sections above, you are **ONLY** required to submit the fee for your H-1B Form I-129 petition, which is \$110.

## Certification.

I certify under penalty of perjury, under the laws of the United States of America that this attachment and the evidence submitted with it is true and correct. If filing this on behalf of an organization or entity, I certify that I am empowered to do so by that organization or entity. I authorize the release of any information from my records or from the petitioning organization or entity's records, that the Immigration and Naturalization Service may need to determine eligibility for the exemption being sought.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

