

GENERAL
INFORMATION

H-1B and O-1 Comparison Chart

The chart below is an informational tool to highlight similarities and differences between H-1B and O-1 status.

	H-1B	O-1
Definition	Temporary employee in a specialty occupation.	Temporary employee who is of extraordinary ability or achievement in the sciences.
FTE Appointment Required	Yes	Yes
Maximum Duration of Status	6 years. Up to 3 years may be requested with each petition filing. Additional time beyond 6 years may be requested based on time spent outside of U.S. and/or a pending permanent residence application.	No time limit. Up to 3 years may be requested in the initial petition. Extensions may be requested in 1-year increments.
Eligibility Criteria	Individuals performing services in a specialty occupation. Employment position must meet certain requirements of job complexity and/or degree level. In general, NIH FTE positions meet this requirement.	Extraordinary ability in the sciences requires demonstration of sustained national or international acclaim. Specific criteria outlined on the DIS website .
212e – Two-year Home Residence Requirement	If subject to 212e, to be eligible for H-1B status, the beneficiary is required to complete one of the following: 1) Reside for two years in his or her country of lawful permanent residence (based on DS-2019) 2) Obtain a waiver of the requirement by recommendation from Department of State (DOS) and approval from the United States Citizenship and Immigration Services (USCIS) NOTE: Canadian citizens may be able to obtain H-1B status without fulfilling 212(e).	Does not affect eligibility for O-1 status. If subject to 212e and a waiver of the requirement has not been granted, O-1 status is obtained by USCIS approval of an O-1 petition, followed by issuance of an O-1 visa at a U.S. Consulate abroad and admission into the U.S. at a port of entry.
External Agency Approvals Required for Initial and Extension of Stay	Department of Labor certification of Labor Condition Application (LCA), USCIS petition approval, and DOS visa issuance (if outside the U.S.).	USCIS petition approval and DOS visa issuance (if outside the U.S.).
Timeframe for Filing Petitions with USCIS	Petitions may be filed no more than 180 days prior to the expected start date.	Petitions may be filed no more than one year prior to the expected start date.
Procedures for Extension of Stay in the U.S.	Petition requesting an extension filed with USCIS. Requires updated documentation. Once petition is filed with USCIS, beneficiary can remain in the U.S. and continue work up to 240 days beyond end date of current approval notice while the extension is pending.	Petition requesting an extension filed with USCIS. Requires updated evidence meeting O-1 criteria of extraordinary ability. Once petition is filed with USCIS, beneficiary can remain in the U.S. and continue working up to 240 days beyond end date of current approval notice while the petition is pending.

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Transfer to a new employer	Eligible for “portability” – upon new employer’s submission of a petition to USCIS, employment with the new employer may begin.	New employer files petition for new employment. Petition approval required before employment can begin.
Employment Authorization for Dependents	In general, none. If the H-1B holds an approved I-140 or has been granted H-1B status beyond 6 years in certain circumstances, H-4 dependents may apply for employment authorization.	None
Full Patient Contact	An H-1B employee may engage in full patient contact if the following are met: 3) Graduate of a school of medicine in the U.S. <u>Or</u> all of the following: 1) Graduate of a school of medicine in a foreign country or have full medical licensure in a foreign country 2) Competency in written and oral English by passing exam acceptable to ECFMG 3) Passed USLME Step 1, 2, and 3 or NBME (Parts I, II, & III) or FLEX (Components I & II) 4) Licensure or other authorization to practice in the state of intended employment. Graduates of foreign medical schools may be exempt from the medical licensure exams and English proficiency requirement if deemed to be of national or international renown .	Regulations do not address specific requirements for patient contact by O-1s. Patient contact is permitted pursuant to general requirements of the jurisdiction and institution of intended employment.
Outside Employment and Activities	H-1B employees are only authorized to provide services to the H-1B petitioning employer. Any outside activity, paid or unpaid, must be reviewed and approved by the NIH Ethics Program and DIS before they occur.	O-1 employees are only authorized to provide services to the O-1 petitioning employer. Any outside activity, paid or unpaid, must be reviewed and approved by the NIH Ethics Program and DIS before they occur.
Petitioner Responsible for Return Travel Expenses to Last Place of Residence Prior to Entry into the U.S.	Yes, if dismissed prior to expiration date of current H-1B petition.	Yes, if dismissed prior to expiration date of current O-1 petition.