H-1B (Specialty Occupation) Information for Departments

- Staff and Contact Information  1
- Introduction to H-1B Specialty Occupation Status  2
  - Government Regulations  2
- UCLA Policy for H-1B Status  3
  - Who Qualifies?  3
  - UCLA Students  4
  - J-1 Visa Option  4
- Procedures  5
  - New cases  (School of Medicine and Non-School of Medicine Departments)  5-6
    - Employee Taken Off Payroll  6
    - Portability  6
  - Extension cases  (School of Medicine and Non-School of Medicine)  7-8
    - 240-Day Rule  8
  - Amendment Cases  8
  - All Cases  8
    - Labor Condition Applications  8-9
    - Government Agencies’ Processing Times  9
  - Plan Ahead  9
  - Approval Notification  10
- Departments’ Responsibilities  11
  - Work Sites  11
  - Posting  11
  - Employment Changes  11-12
  - Employee Termination/Separation  12
- Appendix  13
  - Terminology/Acronyms  13-14
  - “Statement by the H-1B Holder”  15
  - Other Resources  16

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Employment Visa Listserv

Listserv (employmentvisa@lists.ucla.edu): To subscribe to the list, please send request, with additional email addresses to add (if applicable), to Niño Abueg. For department personnel, subscribing is an option. We require all H-1B holders to be subscribed. Because this is a notification-only list, messages to this email address will not be visible to other posters and may be deleted automatically by the system. If you have any questions regarding the notifications or the list itself, please email Niño directly.

School of Medicine Departments

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Introduction to H-1B Specialty Occupation Status

Dashew Center

The Dashew Center for International Students and Scholars assists UCLA departments and units by advising on immigration regulations and visa options. The Dashew Center also prepares and submits applications and petitions to the U.S. Department of Labor (DOL) and the U.S. Citizenship and Immigration Services (USCIS) for those persons whom the department or unit wishes to employ in temporary positions, authorized by H-1B status. Furthermore, the Dashew Center represents UCLA in dealing with USCIS and other government agencies, and ensures that the University complies with laws and regulations in processing employment-based visa petitions.

Government Regulations

H-1B is an employment-based visa category for an individual coming temporarily to perform services in a specialty occupation. A specialty occupation is one which requires the theoretical and practical application of a body of highly specialized knowledge requiring completion of a specific course of higher education. The minimum requirement is a baccalaureate degree, or its equivalent, and the field of the degree must be related to the position.

Under current regulations, H-1B status is granted for an initial period of three years, with a three-year extension possible, for a maximum duration of six years. An extension of H-1B status beyond the six-year maximum period is possible under certain circumstances.

The H-1B petition is employer specific. An H-1B beneficiary can only be employed by, and paid by, the employer who petitioned for H-1B status on his/her behalf. In addition, the beneficiary can only be employed in the specific job duties as stated in the H-1B petition. The employment-based staff at the Dashew Center should be contacted if any changes in the position or duties are anticipated. (See Department Responsibilities, page 11.) An amended H-1B petition must be filed with the USCIS if the changes are significant – i.e. material changes. The Dashew Center will charge a user fee to process an amended petition. (See Amendment Cases, page 8.)

Spouses and minor children of H-1B status holders may obtain H-4 dependent status. H-4 dependent status does not in itself provide employment authorization. Under certain very limited circumstances when the H-1B holder has started a permanent resident process, an H-4 spouse can obtain employment authorization.
UCLA Policy for H-1B Status

Current UCLA policy requires that an outside attorney be retained to assist with all new H-1B cases. The Dashew Center will assist with the referral to an attorney for all non-School of Medicine cases. Julie Zamoyski will assist with the attorney referral for School of Medicine cases. Julie is the Director of Visa and Licensing Office, Dean’s Office, David Geffen School of Medicine at UCLA.

For new cases, the Dashew Center will provide “partial service.” Under partial service the Dashew Center will provide counseling in determining strategy for cases; review documents prepared by the law office to ensure compliance with UCLA’s policy, procedure, and format; obtain university signatures; and provide status reports.

H-1B extension cases are generally handled entirely by the Dashew Center (“full service”), but on occasion an outside attorney will be retained to assist.

Who Qualifies for H-1B Status?

UCLA will support H-1B status for an alien who has been offered a full-time temporary position as a faculty member, researcher, or other professional who is critical to the institution’s academic or research mission. Examples of payroll titles which qualify are Lecturer or higher faculty title, Postdoctoral Scholar – Employee, Staff Research Associate II or higher, and Programmer/Analyst II or higher. (Please note that even if the salary offer meets UCLA’s minimum salary requirement, there is no guarantee that it will meet the prevailing wage determination which is obtained from the DOL.) A job offer of three or more years is required.

The three-year full-time appointment criterion can be waived if UCLA is filing an H-1B petition for concurrent employment – i.e. the individual already holds H-1B status and will remain employed full-time by an outside employer and UCLA is also in need of his or her services.

When there is a question about meeting any of the criteria, the chair or director should send the Dashew Center a memo requesting a waiver of policy. This memo should indicate the title of the position to be offered; salary; appointment dates; and description of the position, including job requirements and the academic degree/background necessary for the position. The memo should also include a clear statement of the importance of the alien to the institution’s academic or research mission, and a reason for the waiver request. The Dashew Center will present the memo to the Vice Chancellor, Legal Affairs for a decision on the request.

Note regarding a change of H-1B employer: The department should be aware that an individual currently holding H-1B status who has been offered a position at UCLA and who wishes to leave his/her current H-1B employer must continue working with the
current employer until UCLA files the UCLA H-1B petition with the USCIS. An H-1B worker who resigns his/her position prior to UCLA filing a new H-1B petition might be seen by USCIS as being in violation of his/her H-1B status, and therefore ineligible for an extension of stay. This issue should be discussed with the employment-based staff.

Can UCLA Students Hold H-1B Status?

Currently registered UCLA students are not eligible for UCLA H-1B petition sponsorship. Also note that UCLA requires all F-1 students eligible for optional practical training (OPT) to apply for OPT authorization first, before an H-1B petition will be considered. If a UCLA H-1B holder subsequently wishes to enroll as a full-time student at UCLA, the individual must request a change of status from H-1B to F-1 and must resign from full-time employment at UCLA.

J-1 Visa Status: Another Option

There is another visa classification, the J-1 exchange visitor, which may be used for professors, research scholars, or specialists. Although the J-1 status carries with it certain restrictions (some individuals may be subject to the 2-year home residence requirement), it may be obtained more quickly and easily than the H-1B status if the alien is not in the U.S. Please note that the dependents of J-1 exchange visitors may apply for work authorization whereas the dependents of H-1B temporary workers may not. To determine whether the J-1 classification is appropriate for a specific case, please contact Tony Coelho, the J-1 visa counselor at the Dashew Center. For departments under the School of Medicine, please contact Julie Zamoyski.
**Procedures**

To begin the process of obtaining H-1B status, the Department Contact should get in touch with Davis del Pino or Sylvia Ottemoeller as early as possible by phone or email. Be prepared to answer the following questions when you contact the counselor: what is the position offered, what is the salary, what visa status does the individual currently hold, what is the expiration date of current status, and who will be paying the attorney fees.

Following your consultation, you will be sent a startup packet by email. This will include a referral to the attorney. You should submit your case with all the requested documents to the Dashew Center promptly. The departments should always retain file copies of the documents. The law office will provide the department with information on immigration filing fees and legal fees.

### School of Medicine Departments

For School of Medicine departments, the Department Contact should send an original set of documents to the Dashew Center and a set of copies of the documents to Julie Zamoyski.

### New Cases

The following types of cases are considered new cases: a “free-floating” (also known as “loose”) H-1B petition, a change of status (COS) to H-1B, and, a change of H-1B employer (COE) petition. Generally, a free-floating H-1B petition is one that is filed with the USCIS for an individual coming directly to UCLA from outside of the United States. COS cases are those in which the applicants are already in the U.S. but are holding another status – e.g. F-1 or J-1 status. COE cases are those in which the applicants are already in the U.S. and hold H-1B status with another U.S. employer.

The following is a sample start package that you will receive from Davis del Pino or Sylvia Ottemoeller.

*There are usually 7 items (6 documents and 1 email message) needed to initiate a UCLA H-1B petition, in which a UCLA department or unit intends for university funds to be used to pay any part of the legal fees of an outside attorney:*
1. *H-1B Biographical Information Form, signed by the Chair, Dean or Director or head of the university unit*

2. *Letter with request to pay outside attorney, signed by the Chair, Dean or Director of the university unit*

3. *Copy of up-to-date curriculum vitae*

4. *Copy of degree certificate(s), with translation if applicable*

5. *Documents showing current immigration status (all previously issued I-20s, EADs, DS-2019s, H-1B approval notices; passport bio page; and current Form I-94 front and back, if applicable)*

6. *A completed Recharge Order Request, (formerly P-39)*

7. *Email message about arrangement for payment of attorney fees*

**Note:** A sample letter for #2 will be attached to the email start package, if applicable. Contact information for an attorney will also be included in the email packet so the department, or the individual, may call the law office to obtain a fee quote. The general H-1B guidelines for departments and current recharge fees can be found on the Dashew Center website.

The department should submit the package **complete with the list of required documents** to Sylvia; the department must retain a set of the copies of the documents for its records. When all the required documents have been received, all parties will be notified so that the attorney may begin to process the case.

**Employee Taken Off Payroll**

If there is a gap period between employment authorizations, the employee **must be taken off payroll** until the H-1B petition is approved. For example, the F-1 OPT employment authorization document (EAD) has expired and the requested change to H-1B status has not been approved yet; or, the J-1 Form DS-2019 has expired and the requested change to H-1B status has not been approved yet. Furthermore, the employee is NOT permitted to serve in any volunteer capacity at the job site while he/she is off the UCLA payroll.

**Portability**

The department hiring an individual who has previously held, or currently holds, H-1B status, and who is coming to UCLA from another employer (i.e., COE cases), can take advantage of H-
1B “portability” provisions. The portability provisions allow such an individual to begin his/her employment with UCLA as soon as UCLA has filed a new H-1B petition with the USCIS.

**Extension Cases**

Generally, H-1B extension cases are processed in-house by the Dashew Center. An application for an extension of H-1B status must be submitted to the Dashew Center no later than three (3) months before current expiration. Dashew Center strongly recommends that the application be submitted six (6) months before current expiration. In addition, please note that the option of requesting premium processing is available to secure an expedited approval of the extension of H-1B status, if necessary or simply desired.

The following documents must be submitted to the Dashew Center for an H-1B extension:

1. Letter from the Chair/Director (electronic draft is preferred, to allow for editing changes). The department chair or unit director should address the letter to:
   United States Citizenship and Immigration Services
   California Service Center
   P.O. Box 10129
   Laguna Niguel, CA 92607-0129

   *This letter should include: the title of position alien holds, salary, current duties, and number of hours of work per week. A statement of the department's need to continue the employment of the alien and the new dates of employment requested should also be included. Please note that an extension of three years must be requested, if available, and the maximum duration an alien can hold H-1B status is six years.*

2. Required filing fee & forms

   a) **Alien with no dependent(s):**
      - copy of Form I-94 printout or if paper card, front and back; copy of previous H-1B approval notice(s)
      - copy of highest academic degree and an updated curriculum vitae
      - biographical data page(s) from passport
      - $325.00. Money order or check payable to United States Citizenship and Immigration Services.

   b) **Alien with dependent(s):**
      - copies of Forms I-94 printout or if paper card, front and back, of alien and all dependents
      - copy of previous H-1B approval notice(s) and copy of dependent’s H-4 approval notices
- Form I-539 with Supplement 1 (Application to Extend/Change Nonimmigrant Status), completed and signed by dependent(s)
- copy of highest academic degree and an updated curriculum vitae
- biographical data page(s) from passport of alien and all dependents
- $325 for alien + $290 for the dependent(s). Money order or check payable to United States Citizenship and Immigration Services.

240-Day Rule: Employee Remains on Payroll

When an extension of H-1B status has been filed with the USCIS in a timely manner, and is pending adjudication, departments may extend the individual’s employment authorization on payroll for 240 days beyond the expiration date of the individual’s current H-1B status, as provided for in immigration regulations. This provision is known as the “240-day rule”. The petition has been filed in a timely manner when it has been submitted and received by the USCIS before the individual’s H-1B status expires.

Amendment Cases

Generally, H-1B amendment cases are also processed in-house by the Dashew Center. UCLA must file an amended H-1B petition with the USCIS if there will be any significant change to a position held by an H-1B employee.

The department must inform the employment-based staff of any anticipated change in an H-1B employee’s duties, job title, number of hours worked per week, or work location, or change in salary funding sources leading to a change of department which will handle the employee’s payroll matters. The staff will then review the changes to determine whether UCLA needs to file an amendment to the H-1B petition.

If it is determined that UCLA must file for an H-1B amendment, the staff will instruct the department to begin the process. The Dashew Center will charge a user fee to process an amended petition.

All Cases

Labor Condition Applications (LCAs)

LCAs are filed with the Department of Labor (DOL). Currently the DOL is taking from one to two weeks to certify an LCA.

Shortly after the H-1B petition is mailed to the USCIS for filing (or to the attorney, if one is assisting with the case), the employment-based staff will contact either the department or the
individual for the purpose of providing a copy of the Labor Condition Application (LCA). Department of Labor regulations require that employers provide a copy of the LCA to the H-1B beneficiaries no later than the first day of their employment.

If the new employee is coming from outside of the U.S. or from another employer, the department should ensure that the employee receives a copy of the LCA, and signs the form verifying that the employee has received it, immediately upon the employee’s arrival at UCLA. If the individual is already employed by UCLA, authorized by another visa status, the staff requests that the department return the signed verification form confirming that the employee has received a copy of the LCA, as soon as possible.

**Government Agencies’ Processing Times**

The government agencies involved in processing UCLA H-1B petitions include: the National Prevailing Wage and Helpdesk Center (NPWHC), the DOL, and the USCIS, all federal government agencies. An H-1B petition may be filed with the USCIS only after the processes with the NPWHC and DOL are cleared. Positions for which there is a union contract are exempted from the NPWHC process.

**NPWHC**

Since January 1, 2010, all requests for prevailing wage determinations (PWD) are handled by the NPWHC in Washington, D.C. Positions for which there is a union contract (e.g. Postdoctoral Scholar, SRA and Lecturer) are not affected by NPWHC’s processing time because UCLA does not need to obtain a PWD for these positions. The salaries for these positions are already union negotiated and ratified, and deemed to be the prevailing wages.

**USCIS**

The USCIS can take up to 6 months to process an H-1B petition. If premium processing is requested, the USCIS will adjudicate the petition within 15 days of receiving it; the cost for the expedited processing is an additional $1,225 fee to be paid to the USCIS.

**Plan Ahead**

The department should contact the employment-based staff well ahead of time if H-1B status may be needed to authorize hiring an individual or retaining an employee on the payroll. For example, the department must plan to submit the start package to DCISS at least three months ahead of the requested beginning date if the position offered is a non-unionized position, and
the case is to be filed with premium processing. To avoid premium processing reliably, the H-1B start package must be received at least 7 months before the requested beginning date.

**Approval Notification**

When the H-1B petition is approved and the Dashew Center has received the original Form I-797, Approval Notice, the department and employee will be notified. A copy will be sent to the department contact person, either by fax, email or campus mail, and the employee will be asked to come to the Dashew Center to collect the bottom portion of the approval notice (the supplemental Form I-94 to be attached to the original I-94 in his or her passport). The employee will also be asked to read and sign the *Statement by the H-1B Holder*, an overview of the rules and regulations regarding H-1B status.

If the individual is coming from abroad, the attorney assisting with the case will provide all the documents necessary for the application for the H-1B visa and provide instruction to the individual accordingly. This applies to both School of Medicine and non-School of Medicine cases.

* A copy of this statement is included in the Appendix.
Department Responsibilities

The department is the hiring authority and is responsible for conveying the details of the prospective employee’s appointment clearly and accurately to the Dashew Center. The role of the Dashew Center in the employment-based area is to assist the department with obtaining employment authorization for foreign individuals hired by the department, so they can legally be employed by UCLA. Information provided on the Biographical Information Form by the hiring department is key to the Dashew Center processing of the H-1B petition.

Work Sites

It is crucially important that the employment-based staff be informed of all physical locations where the employee will be working because UCLA is required to obtain prevailing wage determinations for each location and state in which the employee will work. For example, multiple prevailing wage determinations must be obtained for researchers who have to work out of national laboratories around the U.S., and Post M.D.’s (medical residents) who need to work rotations at other hospitals or medical facilities apart from the UCLA Medical Center on campus.

Posting

For positions that do not have collective bargaining representation, which includes most UCLA positions, the DOL regulations require that a Notice of Intent to File a Labor Condition Application (NIFLCA) be posted in (at least) two locations at each place that the individual will be working prior to the filing of the LCA. The Dashew Center cannot file the LCA with the DOL until we have evidence that the NIFLCA has been posted. Hence, the employment-based staff requests that department contacts complete the NIFLCA notice, indicating the locations where the notice will be posted, the dates that the notice will be posted, and by whom, and then fax a copy to the Dashew Center as soon as possible. The notice should remain posted for ten (10) working days.

Employment Changes

The department must inform the Dashew Center of any changes in an H-1B holder’s employment. This includes, but is not limited to: changes in duties, job title, work location (moving to a different lab, or to a different department), and changes in salary funding sources leading to a change of department which will process the employee’s payroll. An employee for whom UCLA has obtained H-1B status to work full-time (40 hours/week) must work full-time at all times. The department should not reduce an employee’s work hours without first consulting
the Dashew Center. The department must also notify the Dashew Center if an H-1B holder’s employment will be terminated/separated, if the individual has resigned from his/her appointment, or if the individual will be taking a sabbatical leave or is requesting a leave of absence.

**Employee Termination/Separation**

If an H-1B holder’s employment is terminated before the end of the period authorized in the H-1B petition, the department is liable to pay the reasonable cost of the individual’s return transportation abroad. If an employee moves to another department, the new department will take on the responsibility and liability to pay the return transportation cost if the employee is terminated before the H-1B petition expires. This liability applies only if the employment is terminated by the employer; the department does not have any liability to discharge if the individual resigns from his/her appointment.

The department must also notify the Dashew Center if an H-1B holder’s employment will be terminated/separated, if the individual has resigned from his/her appointment, or if the individual will be taking a sabbatical leave or is requesting a leave of absence.
Appendix

Terminology/Acronyms

240-day rule: USCIS regulation which provides for an extension of an employee’s employment authorization for a period of 240 days beyond the date of expiration of the underlying authorized period of employment, following a timely filed extension application.

CBP: Bureau of Customs and Border Protection

COS: Change of Status

COE: Change of Employer

CSC: California Service Center - one of four regional USCIS Service Centers established to handle the mail, file, data entry, and adjudication of applications for immigration services and benefits. Service Centers are not staffed to handle walk-in applications or answer questions.

DHS: Department of Homeland Security

DOL: U.S. Department of Labor

EAD: Employment Authorization Document

EDD: Employment Development Department

Free-floating, “Loose” Petition: Shorthand terms describing an H-1B petition which requires consular notification where the prospective employee obtains H-1B status by entering the U.S. from abroad. The individual must apply for an H-1B visa stamp to enter the U.S. at a United States consular post.

Form I-129, Petition for a Nonimmigrant Worker: Form submitted to the USCIS by the employer, with appropriate filing fees, to apply for the H-1B Specialty Occupation status. This form is filed on behalf of an alien, and not by the alien.

Form I-140, Immigrant Petition for Alien Worker: Form submitted to the USCIS by the employer, with appropriate filing fees, to petition for an alien worker to become a permanent resident in the United States. This form is filed on behalf of an alien, and not by the alien.

Form I-539, Application to Extend/Change Nonimmigrant Status: Form submitted to the USCIS by the individual, with appropriate filing fees, to apply for a change of status or to extend the status of dependents.
Form I-797, Notice of Action: A Department of Homeland Security, United States Citizenship and Immigration Service (USCIS) immigration form indicating that USCIS has taken an action on a petition or application. This includes receipt notices and approval notices.

Form I-907, Request for Premium Processing Service: Form submitted to the USCIS by the employer, with appropriate filing fees, to request expedited processing of certain applications.

Form I-94, Arrival-Departure Card, Arrival-Departure Record: Card received at port of entry to the U.S. It indicates admission number, visa status granted to alien, place and date of admission to the U.S., and specific period of authorization stay (or duration of status – D/S).

ICE: Bureau of Immigration and Customs Enforcement

LCA: Labor Condition Application - an application by the employer to the Department of Labor indicating compliance with requirements. A DOL certified LCA is required for H-1B specialty occupation nonimmigrant petitions.

NPWHC: National Prevailing Wage and Helpdesk Center.

Portability Provision: USCIS regulation which provides for an H-1B holder to begin employment with a new employer upon the employer’s filing of a new H-1B petition for the individual. Individuals who have never held H-1B status must wait for USCIS approval of the H-1B petition to authorize their employment.

Visa Status: Term informally used for the nonimmigrant visa category or classification held by an alien in the U.S.

Visa, Visa Stamp: A permit to allow an alien to enter the U.S. An alien applies for an appropriate visa stamp from the visa section of an American embassy or consulate abroad before coming to the U.S. Aliens coming to the U.S. to work must apply for the appropriate visa to enter the U.S. The Department of State is responsible for issuing visas, and visas are issued at United State embassies and consulates abroad. At the port of entry, where an alien is granted admission to the U.S., an immigration officer will admit the alien in a specific visa classification (classification must be supported with the appropriate required immigration form and visa stamp) and decide how long the individual can stay, and will record this on the Arrival/Departure Record, Form I-94 (white card). The immigration officer will insert a specific expiration date for the alien’s stay in the U.S. or authorize the alien’s stay to D/S (duration of status) as the expiration date.

USCIS: United States Citizenship and Immigration Services
**Statement by the H-1B Holder**

The Dashew Center requires every H-1B holder to read and sign a responsibility statement. The individual is provided a copy and the original is retained in the individual’s file in the Dashew Center. The text is below.

Please review the items listed below carefully. **You are responsible** for following these rules and regulations. By signing at the bottom of the list you are stating that **you understand the consequences if you fail to follow these rules and regulations**. If you need further clarification of any issue stated below, please ask our employment-based staff at the Dashew Center.

I understand that it is **my responsibility** as an H-1B status holder to **adhere to the following**:

1. **It is illegal for me to work for another employer using UCLA’s approved H-1B petition because my H-1B status is employer-specific.**

2. **I must inform the employment-based staff at the Dashew Center of any changes in my employment as soon as I have knowledge that the change is imminent.** (For example, a person who obtained H-1B status for a researcher position is asked to teach as a lecturer; or a person who obtained H-1B status to work in one department plans to move to another department.)

3. **If I intend to travel outside of the U.S., it is imperative that I contact the employment-based staff at the Dashew Center for visa instructions and necessary documentation.**

4. **If I intend to travel outside of the U.S., and I do not possess a valid H-1B visa stamp in my passport, I must apply for a new H-1B visa stamp from a U.S. consulate or embassy prior to my re-entry to the U.S.**

5. **If I attempt to obtain a visa as a third country national in Canada or Mexico, and my application is refused or remains pending, and I do not have a valid visa in my passport, I understand that I cannot legally re-enter the U.S. from Canada or Mexico.**

6. **I understand that if I must apply for a new H-1B visa stamp in my passport to authorize my re-entry to the U.S., there is a risk of a delay in my obtaining the visa because of security checks by government agencies. The delay may be from a few weeks to several months.**

7. **If I am traveling outside the U.S., I must have the original H-1B Approval Notice (Form I-797A), with me when I re-enter the U.S.**

8. **After every trip outside the U.S., I must return the original H-1B Approval Notice (Form I-797A), to the Dashew Center, and provide a photocopy of my new I-94, front and back.**

9. **I must keep my passport valid at all times.**

10. **I must make sure my department submits an application to extend my H-1B status in a timely manner, no later than three months before the H-1B petition expires.**

11. **If I plan to leave UCLA’s employment, I must inform the employment-based staff at the Dashew Center immediately.**

12. **I understand that if my employment is terminated before the expiration date of the H-1B petition filed on my behalf, I do not have a grace period. I understand that I must leave the U.S. or apply to USCIS for valid status by the UCLA separation date in order to stay in the U.S. legally.**

13. **I understand that H-4 dependent status does not in itself provide employment authorization, and that under certain very limited circumstances, an H-4 holder can obtain employment authorization.**

14. **If I am changing my place of residence in the U.S., I must inform the United States Citizenship and Immigration Services (USCIS), Department of Homeland Security, within 10 days of such change. I will also report this information for my dependents here with me. I understand that I have to fill out Form AR-11 to report the address change to the USCIS.**
Other Resources

The following forms and documents are available on our website, http://www.internationalcenter.ucla.edu/VisaServices.aspx?viewID=3&subviewID=7, for departments requesting H-1B status for employees:

- H-1B Guidelines, New and Extension
- Sample H-1B Extension Letter
- H-1B Biographical Information Form

Visa and Licensing Office: http://www.deans.medsch.ucla.edu/visa/avisa.html

U.S. Department of State: http://www.travel.state.gov/