H-1B REQUEST	# INSTRUCTIONS & CHECKLISTS **Updated March 2019**

Contact CIE before starting H-1B request forms.

IMPORTANT: Please do not begin H-1B process until all University approvals have been given for the employment of this employee, and he/she has been sent an <u>official</u> offer letter. [If time is extremely limited, contact CIE (865-974-3177) to discuss possible shortcuts.]

What is H-1B Status?

H-1B, or Temporary Worker, immigration status is usually the most appropriate (and often the only) visa or immigration status for a non-U.S. resident who is employed in a professional position by The University of Tennessee.

Before a potential UT employee may be granted H-1B status, UT must file an H-1B petition with the U.S. Citizenship and Immigration Services **(USCIS).** Although CIE will complete all the government forms necessary for an H-1B petition for a Knoxville area university employee, it is the responsibility of the hiring department to request an H-1B petition on behalf of a current or prospective employee, and to pay all related fees. With the exception of the "Applicant Information Form", and any I-539 completed by a dependent, ALL FORMS SHOULD BE COMPLETED BY THE DEPARTMENT AND NOT BY THE EMPLOYEE.

H-1B processing often takes longer than the employee or host department expects. Please submit paperwork to the Center for International Education *as early as possible*. If the paperwork is submitted late, The University may have to terminate employment, and the employee may be forced to leave the U.S. *** With occasional exceptions, all materials should be sent to CIE by the host department in one single package.***

     See attached checklists for a comprehensive list of documents which must be included with the H-1B Request.

Timing Issues

If a prospective employee does not already have H-1B status or another type of work permission, he/she may not begin working at UT until the UT H-1B petition has been **approved** by USCIS and the employee has been granted H-1B status.

In some cases, an employee may begin working with some other type of work authorization, such as F-1 Optional Practical Training **(OPT)**.

If he/she has H-1B status:
- Another Employer
  - Is currently employed by another employer, he/she may begin working when UT has filed an H-1B petition and received the **receipt** from USCIS (Immigration).
- UT Employed
  - Needs an extension, the new petition must be submitted to USCIS (Immigration) before the existing status ends. He/she may then continue working for 240 days while the petition is pending.
  - Will change positions, a new LCA and petition must be filed **before** the employee changes positions. The employee may usually begin the new position when UT gets the **receipt** for the new petition. Note that it can take 3-4 months to prepare a petition (due to delays at the U.S. Department of Labor), so it is still important to begin the process as early as possible.

Petition Approval and Premium Processing

Once the H-1B petition is prepared by the UT Center for International Education and submitted to USCIS (Immigration), processing times can vary from 1-8 months. If faster approval is desired, the host department can pay an <u>additional</u> $1410 for *premium processing*. This usually reduces the petition time to 2-3 weeks. Note that premium processing does not reduce the time needed to prepare the petition. In most cases, premium processing is not necessary if the employee already has H-1B status.

Steps in the H-1B Process

Summary of steps for an H-1B petition filed by the University of Tennessee, Knoxville

1. Terms of employment must be decided and approved by all necessary parties. *H-1B petition should not be requested until firm job offer has been made and funding has been secured.*

2. The hiring department completes a **"Request for H-1B Petition"** and **"Actual Wage Calculation Form".** The forms are signed by the Supervisor (H-1B Request Form only), Department Chair and the Dean of the College (if relevant) before they are sent to CIE. **[Note: The Actual Wage Calculation is documentation that the H-1B employee will be paid at least as much as comparable employees. If the H-1B employee's salary is lower than all other comparable employees, the Actual Wage Form cannot be signed, and an H-1B petition cannot be filed.]**

3. Department assembles other documents listed in **Checklist on Pages 5-6.**

4. Department collects all required documents from prospective (or current) H-1B employee [and from any dependent applying for H-4 status or extension] **(See Checklists on Pages 8-11)**

5. All forms and documents listed above [including items from employee and dependent(s)] are sent to CIE in one package. They may be sent by campus mail, hand-carried, or submitted through "UT Vault" at https://vault.utk.edu/ . (Note that signed Form I-539 from dependent and checks must be *originals* so may not be sent by UT Vault or e-mail) Please *do not* submit entire package by e-mail. Please *do not* print on two sides of the paper.
   CIE Address: 1620 Melrose Avenue

6. Hiring department requests checks through IRIS. (Checks will be mailed directly to the Center for International Education from the Treasurer's Office.) Please follow **instructions on Page 7** carefully!

7. Department Head and Supervisor complete and sign **Export-Control Attestation Form.** Form is sent to appropriate Export Control Officer (See address on the form), along with photocopy of the H-1B request form. (UTK Departments do not send copy of entire request package.) Note: Export Control Form is *not* sent directly to CIE by hiring department.

   Export Control Officer will verify information provided, complete and sign the bottom of the Attestation form, and send signed form to CIE. Export Control Officer may contact H-1B employee's supervisor to discuss proposed work, if necessary.

8. The Center for International Education (CIE) will request a "prevailing wage determination" in accordance with the U.S. Department of Labor.

9. If the proposed salary does not meet the prevailing wage requirement, CIE will contact host department. If the salary can be increased to the required amount, department completes an **H-1B amendment form**. *Before the amendment form can be signed, department must obtain a revised offer letter (for new employees) or enter the salary increase into IRIS (for continuing employees).*

10.. CIE and Human Resources will arrange for the mandatory on-campus posting of the Labor Condition Application (LCA) notice for 10 working days. Back-up documentation will be kept in the Center for International Education. The hiring department will be asked to post one copy of this notice in the department before the LCA can be filed. Department representative must verify the posting with an e-mail to CIE. (The e-mail serves as legal documentation of posting). The notice must remain posted for the period stated on the form. It does not need to be returned to CIE. A Human Resources representative will post a second copy in the HR Department.

11. If the employee will be working at any off-campus location, CIE will ask the hiring department to arrange for the notice to be posted in two locations at that location before the LCA can be filed. (If the employee will be working at ORNL, CIE will arrange for *one* of the postings at the lab; host department arranges for the second.) *(NOTE: It is very important to list all work sites (including ORNL) in the original H-1B Request. If a decision is made later for the employee to work at an off-campus location, the H-1B process must begin again.)*

12. After confirming that the H-1B employee will be paid at least the *actual wage* and *prevailing wage*, CIE will file a Labor Condition Application (LCA) with the U.S. Department of Labor (DOL), and DOL will return a certified the LCA. [Normally takes 7-10 days]

13. When the LCA has been certified by DOL, CIE will complete an H-1B petition [I-129] and submit it, along with other necessary forms and documents, to the U.S. Citizenship and Immigration Services (USCIS). [May take 2-10 days to prepare]

14. H-1B approval (I-797) will be sent to CIE. Host Department and H-1B employee will be notified. H-1B approval can take months (with regular processing); approvals are usually received in 2-3 weeks with premium processing. CIE will give or send the H-1B approval to the employee. (See notes on "timing issues" above.) [If employment is permitted based on receipt, CIE will give copy of receipt to employee.]

15. If the H-1B employee is not already in the U.S., he/she must obtain an H-1B visa at a U.S. Consulate before entering the U.S. CIE will send the petition approval to the employee, along with instructions for the visa application. This process may take 1-2 months. *In many cases, the U.S. Consulate will request a background check before issuing the visa. This may delay the visa process an additional 1-3 months or longer.*

Summary of Steps for Hiring Department, to Initiate H-1B Processing

- ☐ **STEP ONE** Confirm official job offer and funding

- ☐ **STEP TWO** Complete H-1B Request and Actual Wage Forms and get signatures

- ☐ **STEP THREE** Collect forms and documents from H-1B employee

- ☐ **STEP FOUR** Gather other required documents from department records

- ☐ **STEP FIVE** Submit all above items to CIE

- ☐ **STEP SIX** Request checks in IRIS

- ☐ **STEP SEVEN** Complete Export Control Form and send to Export Control Officer with copy of H-1B Request Form

IMPORTANT: Hiring Departments should make every effort to provide accurate information in the H-1B Request. This information will be used to complete government documents which are filed *under penalty of perjury*.

In rare cases, it may be necessary for the hiring department to change information included in the H-1B Request. This can be done before the I-129 petition is filed with USCIS (Step 13 above) by using an H-1B amendment form. Contact CIE if an amendment form must be filed.

After the I-129 has been filed, any changes in the terms of employment will require a new H-1B petition, with fee. This includes changes in job title, major changes in responsibilities, *location*, or salary (except normal salary increases).

Note that officers of the U.S. Department of Homeland Security may make unannounced visits to UT or other sites of employment to verify that the employee is employed at that location, and as described in the petition.

Acronyms

CIE = UTK Center for International Education

USCIS = U.S. Citizenship and Immigration Services (Immigration)

DHS = U.S. Department of Homeland Security

DOL = U.S. Department of Labor

LCA = Labor Condition Application

I-129 = H-1B Petition filed by the employer with USCIS

OPT = Optional Practical Training (Work authorization often given to F-1 students after (sometimes before) graduation

<u>WARNING:</u>

Under U.S. Law, Host Departments must comply with the following requirements.

Failure to comply with these regulations will put The University of Tennessee in violation of U.S. law and can result in high costs and severe penalties for the entire university.

- ➢ **Employee must be paid the full wage listed on the LCA and petition for the entire period of H-1B approval, even if he/she is not actually working.**
- ➢ **Host department must notify the UT Center for International Education when H-1B employee leaves employment. Petition will then be withdrawn and The University is no longer obligated to pay salary.**
- ➢ **With rare exceptions, Leave Without Pay is not permitted.** (Contact CIE to discuss possible exceptions, such as FMLA Leave)
- ➢ **If UT ends employee's employment before the end of the H-1B approval, The University must offer to pay the cost of the employee's return travel to the home country (if he/she returns)**
- ➢ **Employee must receive full employment benefits, as normally permitted for the position held.**
- ➢ **The following changes in employment are not permitted without a new H-1B petition:**
  - ✓ **Change in job title or department**
  - ✓ **Significant change in job duties (such as the addition of teaching or supervisory duties)**
  - ✓ **Change in the hours of work (e.g. full-time to part-time)**
  - ✓ **Change in work location (including the addition of a second or third work location). This includes an occasional Oak Ridge or a home-based work location. [USCIS makes unannounced visits to the work location to ensure that employee is working in the stated location.]**
  - ✓ **Adding travel requirements not included in original application**

For information about the H-1B application procedure, or about other immigration matters related to UT employment, please contact Elizabeth Smith (elizabeth@utk.edu) or Candice Gilreath (candice@utk.edu) in the Center for International Education (865-974-3177).

Name of Employee: _____

IMPORTANT: Items listed below must be sent to CIE along with all required items collected from the employee *and his/her dependents*   (See Checklists on Pages 7-11).

- In most cases, we ask that all materials be submitted to CIE in one package. If one item will take a long time to obtain, contact CIE for instructions
- Do not send two-sided copies
- UT Checks will be delivered directly to CIE after being requested in IRIS
- Please check items included in package and send this checklist to CIE with H-1B Request package.
- H-1B Forms are available on CIE website at http://international.utk.edu/forms/#scholar
- Send package by campus mail, in person, or by UT Vault.* Do NOT send package by e-mail.
- *Signed I-539 and checks must be originals so cannot be sent by UT Vault

Check if included	Item	What is this?	Comments and Instructions	Needed for H-1B Extension? (Second/Third UT Request)
	H-1B Request Form	Form completed by Host Department requesting H-1B petition, giving information about terms of employment and promising to employ and pay employee for full period requested	• Form should not be signed until **final, official** job offer has been made • All questions should be answered completely and accurately; all information applies to period of time requested in H-1B petition • If anything will change in terms of employment, contact CIE immediately • Form is signed by Supervisor, Department Head, and Dean (or representative) • Funding must be available for full period of time requested	Yes
	Job Ad	Copy of Job Listing on UT Human Resources website	• If job was never advertised, provide explanation • If job was not advertised, provide copy of "PDQ" instead	Yes
	Job Offer Letter	Official Job Offer sent to employee by Human Resources, Provost (UTK) or Dean (UTIA)	• For new employees, if salary must increase to meet actual or prevailing wage, a new job offer should be sent to the employee, with a copy to CIE • For "temporary position", letter may be signed by Department Head (H-1B petitions are rarely done for temporary positions)	Yes
	Itinerary	If employee will work at 2 or more locations, an itinerary is required	• Examples: • M, W, F at location X and T,R at location Y • Aug – Dec at location X, Jan. – May at location Y • Also include brief description of activities at each location • Also include if supervisor works at all locations	Yes

Check if included	Item	What is this?	Comments and Instructions	Needed for H-1B Extension? (Second/Third UT Request)
CIE	Actual Wage Calculation Form	Calculation of "Actual Wage" (wage paid to other, comparable, employees) and certification that H-1B will not be paid less than Actual Wage range	• See specific directions on the form itself • Form is signed by Department Head and Dean (or representative) • If department discovers that proposed salary is lower than Actual Wage, then salary must be increased <u>before</u> H-1B Request is submitted	Yes
Send to Export Control Office	Export Control Form		• Must be completed, signed, and sent to the appropriate Export Control Office, along with a photocopy of the H-1B Request Form • Export Control Form is not sent directly to CIE • Form not needed by CIE until the petition is prepared for USCIS, but to avoid delays, we suggest that it be completed as soon as possible	

NOTE TO DEPARTMENT PERSONNEL:

Check must be made out to U.S. Department of Homeland Security

When requesting a check in IRIS, use Vendor Code 1037744.
Do not add a vendor code in the Payee Field of the Payment Tab!

Be sure to include the full name of the person for whom the check is being requested, in the Text Field

If IRIS entry has been made correctly, check will automatically be sent to CIE in U.S. Mail

Indicate if check has been requested	Check amount	What is this for?	When is it needed?
	$460	I-129 Fee for H-1B Petition	Every H-1B request
	$500	"Anti-Fraud Fee" for H-1B Petition	• Only for the first H-1B petition filed by UT for this employee. • **Not required for extensions** of UT [H-1B] employment. • If Employee had H-1B status for UT in the past and left, consult CIE
	$1410	Premium Processing This usually decreases time of approval of USCIS petition to 2-3 weeks. It does not decrease time needed to prepare the petition.	• Recommended if employee is outside U.S. • Usually recommended if employee is changing immigration status and there is limited time left in current status • Sometimes recommended if employee must travel outside U.S. before H-1B is approved. • Usually not needed for extension of H-1B status, even if employee is currently employed by another employer • Contact CIE if you are unsure if premium processing is needed

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H-1B
Employee

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Checklist:
Pages 8-10

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Instructions:
- Please send/give the items listed below to the contact person in your host department. He/she will then forward them to the University of Tennessee Center for International Education (CIE) with the department's request package.
- Do not send materials directly to CIE.
- Scanned copies (one-sided) are accepted <u>except for</u> the I-539 and checks for dependents.
- If you have questions about the documents or the H-1B process, please contact Candice Gilreath (candice@utk.edu) or Elizabeth Smith (elizabeth@utk.edu) or call 865-974-3177.

Check if included	Item	Who Needs this?	Comments/Directions	Needed for H-1B Extension?
	H-1B Applicant Information Form	Everyone	Available on CIE website at http://international.utk.edu/forms/	Yes
	Current CV	Everyone		Yes
	Diploma	Everyone	• Highest Degree only unless: o If your highest degree is unrelated to this job, also submit diploma for a related degree • Include copy of diploma, even if not in English	Yes
	Transcript	Only if your degree is from U.S. and does not list your major	• Provide copy of your transcript that indicates your major/program	Yes *(Can be copy of same document submitted before)*
	Certified translation of diploma	Only if your diploma is not in English	• **See instructions for certified translation on Page 12**	Yes *(Can be copy of same document submitted before)*
	Evaluation of highest degree by a U.S-based credential evaluation Service	Only if your degree is from a non-U.S. institution	• Many evaluation service organizations are listed at www.naces.org. • (Note: NACES does not do the evaluation. Their members do. Contact individual evaluation service (and NOT NACES). • **See detailed instructions on Page 12**	Yes *(Can be copy of same document submitted before)*
	Passport	Everyone	• Copy ID page showing country, your full name, date of birth and the dates of passport issuance and expiration • If passport will expire within the next 6-12 months, send us a copy of current passport, and apply for new passport as soon as possible, Submit copy of new passport when available.	Yes

Check if included	Item	Who Needs this?	Comments/Directions	Needed for H-1B Extension?
	Visa	Everyone currently in the U.S. except citizens of Canada	• Provide copy of most recent U.S. visa, even if it has expired.	Yes
	I-94	Everyone currently in the U.S.	• Provide copy of I-94 issued when you last entered the U.S., *even if you have extended or changed status since then* • Print your I-94 at: https://i94.cbp.dhs.gov/I94	Yes
	I-797 approval(s)	Anyone who has changed or extended immigration status inside the U.S. since the last entry	• I-797 is approval of change of status issued by USCIS (Immigration) It includes your new I-94 • Copy not needed if you have left the U.S. since the change of status and received a new I-94 when you re-entered. • We do not need back of I-797 • J and F extensions do not get I-797	No (only submit all H-1B approvals)
	All I-20's for current/most recent degree program	Only if you are *currently* in F-1/F-2 status	• If you are on OPT (Optional Practical Training), include I-20 showing OPT recommendation from your institution • Your SEVIS Number is written on your I-20 • We do not need page with regulations	No
	All DS-2019 and/or IAP-66 forms	If you have *ever* held J-1 or J-2 immigration status	• *All* forms are requested, even if program was long ago • If forms are not available, contact CIE for advice • You SEVIS Number is written on your DS-2019 (IAP-66 forms do not have) • We do not need back of form	Yes
	J-1/J-2 visa(s)	If you have *ever* held J-1 or J-2 immigration status	• At least one visa is requested; more may be requested for longer programs	Yes
	J-1 Waiver documents	If you *ever* held J-1/J-2 status <u>and</u> you were subject to 212(e) [two-year residency requirement]	• Not required if you were never subject to 212(e) • Provide "I-612 Approval" or Waiver Recommendation from U.S. Dept of State plus "I-612 Receipt" • If you did not get a waiver, but you did spend two years in your home country, contact CIE for advice	Yes
	All H-1B approvals	If you have ever had an H-1B petition approved, even if you did not use it	• Provide copy of front of entire I-797 (approval from USCIS) (We do not need the back) • We do not need other materials you may have received with the I-797 (such as LCA, I-129, Coversheet, etc.)	Yes
	Last three Payroll Statements	If you currently have H-1B status	• If currently employed by UT, go to: https://irisweb.tennessee.edu/irj/portal/OnlinePayStatement • If in H-1B status and employed by another employer, also provide last three statements, if possible • We may request more recent Payroll Statements before submitting petition	Yes (UT statements only)

Check if included	Item	Who Needs this?	Comments/Directions	Needed for H-1B Extension?
	EAD(s) (Employment Authorization Card)	If you are on OPT (Optional Practical Training) or are otherwise employed with an EAD	• If you are on a STEM Extension of OPT, submit both/all EAD's for OPT • Otherwise, do not submit copies of expired cards	No
	Letter from current employer	ONLY for: Those on OPT OR Those currently in H-1B status who are not employed by UT	• *Recent* letter from employer (supervisor, department head, or Human Resources), stating the dates of employment, and a *very short* job description; letter should state expected ending date of employment • A *job offer letter* does not satisfy the requirement as it does not document dates actually worked • Not required for any UT employment • If currently on OPT, submit letter from any prior employers during your OPT period • If in H-1B status and employed by another employer, you should remain employed in that job until UT can submit a petition for you.	No
	I-140 or I-130 receipt or approval and I-485 receipt (if available)	If you or someone else has applied for permanent residence on your behalf	• The I-140 or I-130 is the USCIS petition form; submit copy of receipt OR approval • The I-485 is your own application to adjust status to permanent residence; submit copy of receipt if you have one	Yes
	Other documents, as requested	It varies	• After we receive your documents, we may ask for further documents or clarifications • If you have an immigration status not mentioned above, or if you have an unusual situation, submit relevant documents	Maybe

Dependents:
Applying for H-4 Status
(Change/Extension of Status)
Checklist

If you have spouse or children (under 21) who are in the U.S. and will apply for, or extend, H-4 status, give the following documents to your host department, along with your own. They will include them in the H-1B package they submit to CIE.

NOT required if dependent is outside United States

(If dependent will enter U.S. before your H-1B petition is approved, contact CIE.)

Check if included	Item	Comments/Directions
	Form I-539 completed and **signed by Dependent** (NOT the H-1B applicant)	- Obtain *current* form at www.uscis.gov - Form should be signed in blue ink by primary dependent (usually spouse) who is applying for H-4 status *Original* form must be submitted - IMPORTANT: Form I-539 is to be completed by dependent (H-4 applicant). Applicant name is the H-4 applicant only. **All questions refer to H-4 applicant (dependent) ONLY.** (e.g. If there is only one dependent, the total number of applicants is ONE; question about employment refers to employment by dependent only, not to employment of H-1B applicant, etc.) - Make sure that your dependent includes Page 6 of the form, and answers all questions, as appropriate. - If more than one dependent is applying for H-4 status, they can all be included in one form. One person completes main form. Add additional dependents on Pages 7, 8 etc.
	I-94	- Provide copy of I-94 issued when you last entered the U.S., *even if you have extended or changed status since then* - Print your I-94 at: https://i94.cbp.dhs.gov/I94
	Passport	- Copy ID page showing country, your full name, date of birth and the dates of passport issuance and expiration - If passport will expire within the next 6-12 months, send us a copy of current passport, and apply for new passport as soon as possible. Submit copy of new passport when available.
	Visa	- Provide copy of most recent U.S. visa, even if it has expired. - Not required for citizens of Canada
	J-1 or J-2 documents, if any	- If dependent has EVER had J-1 or J-2 status, include copies of all DS-2019 or IAP-66 forms and any J-1/J-2 visas - If waiver was obtained , submit final I-612 approval (Copy not needed if already included in H-1B applicant package)
	Marriage Certificate **i**	**i** ONLY required if Dependent is not already in dependent immigration status (example: If you and your spouse have F-1 and F-2 status, then marriage certificate is not needed) If marriage certificate is not in English, provide certified translation, following instructions for translation on **Page 12**
	Other documents as required	- Submit documents of current immigration status - Example: If in F-2 status, submit copy dependent I-20 - If he/she has obtained H-4 approvals inside the U.S. include I-797's - If he/she is not in dependent status now, submit immigration documents following guidelines in Check list on Page 8 (example: If your spouse is in F-1 status, submit I-20's and EAD, as appropriate
	Check for $370 Filing Fee	- Personal check made out to U.S. Department of Homeland Security (UT policy does not permit fee to be paid by UT) - One fee covers all dependents - Make sure home address is printed on the check
	Check(s) for $85 Biometric Fee	- Personal check made out to U.S. Department of Homeland Security (UT policy does not permit fee to be paid by UT) - One check for each dependent - Make sure home address is printed on the check

Instructions for Certified Translation

To be used for documents not in English, such as diplomas, marriage certificates, etc.

- Create an English version of the document on a separate page
- On page with the translation, the translator should write:
  "I certify that I am proficient in English and [language] and that this is an accurate translation"
- Translator should write name, date, and sign
- <u>Any</u> bilingual person may do this, except you and your spouse

Translator <u>does not</u> need to be a notary or certified translator, and translator's signature does not need to be notarized.

Instructions for Evaluation of Foreign Degree

- Find a list of credential evaluation services on the website of NACES at www.naces.org
  Services that are not NACES members may also be used, but some may not be accepted by USCIS
- Go to the websites of some of the services to compare requirements, fees, etc. or contact organization directly for more information
- (Do not contact NACES.   It is a membership organization and does not do the evaluations itself.)
- **For the purpose of an immigration application, the simplest, least expensive, evaluation is usually sufficient.**
- We need only a statement of the U.S. equivalence of the degree
  (Example: "This degree is equivalent to a U.S. Ph.D. degree in Electrical Engineering")
- We normally *do not* need a list or an evaluation of specific courses/classes taken
- The evaluation must include a statement about the qualifications of the evaluator
- We do not need a guarantee or statement of authenticity.
- We suggest you ask the evaluation service if they will do the evaluation based on a photocopy of your document(s). Some services require original documents, submitted to them by you or your university. This can be difficult and time consuming, and unnecessary in this case.
- Some evaluation services also offer a translation service, if you need one (But see translation instructions above)
- We do not need the original evaluation. Keep the original for your records or future use, and send us a good photocopy/scan.
- If you need the evaluation quickly, some services offer faster service for an extra fee. However, note that the evaluation will not be needed until CIE submits the petition to USCIS (Usually 2-3 months after the H-1B paperwork begins at UT. If you request the evaluation when we first begin the H-1B process, the fast service is usually not necessary.