

An E-3 temporary worker is defined as a person who will perform services in a specialty occupation. This is defined by the U.S. Department of Homeland Security as **one which requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires the completion of a specific course of education culminating in a baccalaureate degree or higher in a specific occupational specialty [I.N.A. 214 (i) (1)]**. The E-3 petition is employer and employment specific. This visa option is **only** available to Australian Nationals (Citizens) and carries a yearly numerical limitation (cap) of **10,500** per U.S. Federal Government fiscal year (10/1 – 09/30).

In order to insure compliance, the Office of International Affairs has been designated as the only representatives to file E-3 petitions on behalf of the institution. Private legal counsel **may not** file these applications on behalf of the institution.

Departments or visitors seeking E-3 sponsorship are encouraged to consult with the Office of International Affairs as early as possible.

Eligibility

There are **four preliminary steps** that must be taken before OIA may file the E-3 Visa Petition with the U.S. Department of Homeland Security (DHS), U.S. Citizenship & Immigration Services (USCIS) or the international visitor may apply for a visa stamp at a U.S. Consulate in Australia:

1) Determine if the international visitor qualifies for the E-3 non-immigrant visa.

It is important to note that non-immigrants who are currently or have been in the United States on the J-1 Exchange Visitor Visa may be subject to the two year home residency requirement and would be ineligible to change status in the U.S. to the E-3 status unless a waiver of the two year home residency requirement has been granted or the individual has fulfilled this requirement. However, the two-year home residency obligation would not prevent the visitor from departing the U.S., applying for the E-3 visa from the U.S. Embassy or Consul abroad and making a new entry into the U.S. in E-3 status. To determine if the applicant is eligible for a change of status to E-3 while in the U.S., departments must obtain copies of immigration documents that reflect a complete history of visitor's entries and stay within the U.S. (if applicable).

2) Obtain appropriate administrative approval in writing from the sponsoring department to support the E-3 Visa Petition.

3) Apply for and obtain a Prevailing Wage Determination from the Office of Foreign Labor Certification (OFLC) National Prevailing Wage Center (NPWC) of the U.S. Department of Labor in Washington, D.C.

The University of Texas Health Science Center at Houston must pay 100% of the employee's salary to be considered *the employer*. The employer is required to pay the E-3 worker and all peers the prevailing wage or actual wage, whichever is higher. Therefore, the salary required to move to the next step and request a Foreign Labor Certification must be equal or larger than the prevailing wage obtained as determined by the NPWC. The Office of International Affairs will notify the hiring department if the salary being offered is below the salary required to process the LCA. If the salary offered is below the salary required to process the LCA, the department will be required to seek administrative approval to upgrade the salary and provide a copy of the approval to the Office of International Affairs. Once the salary has been confirmed, the Office of International Affairs will be able to submit a Labor Certification Application (LCA).

4) Apply for and obtain approval in the form of a Labor Certification from the U.S. Department of Labor.

Once the prevailing wage, actual wage, and administrative approval have been received, OIA will process the LCA through the Department of Labor and will post two copies of the LCA. The posting requirement of 10 business days will identify to all employees of the institution that the employer will be filing an E-3 visa petition for a prospective employee with the title and salary identified on the LCA. The visual posting will not identify the international visitor.

Visa Processing Options

Listed below are the two options that are available for Australian Nationals (Citizen) to secure E-3 status once the appropriate UTHSC-H Administrative Office has approved in writing the E-3 sponsorship:

- **Foreign Processing: Obtaining E-3 visa stamp at U.S. Embassy or Consul abroad**

The visitor schedules an appointment with a U.S. Embassy/Consulate abroad (preferably the U.S. Embassy or Consulate in Australia) and presents required documents at the time of appointment. Prior to finalizing your travel plans, please contact the embassy or consulate in the country to which you plan to travel in order to check that country's visa application requirements.

- **USCIS Application: Obtaining E-3 status within the U.S**

Visitor and department provide additional documents and fees in order to petition the E-3 status through Form I-129 to the U.S. Department of Citizenship and Immigration Services.

Documents Required

Please see below the list of documents required both from the hiring department and from the international visitor, to be submitted as one single application packet, if possible:

From the Sponsoring Department:

1. Memorandum of Support – see E-3 Visa Procedures Overview attached for list of content required in this Memo.
2. **Prevailing Wage Form** (Revised 01-16-2009)
3. **Actual Wage Form**
4. A copy of the contract, offer, or appointment letter that specifies the conditions of employment, including title; salary; brief job description; and proposed start and end date. The applicant must have the original letter in possession when applying for a visa stamp abroad as opposite of applying through the USCIS.
5. Employment fees as applicable (see below), when applying for E-3 status within the U.S.

From the International Visitor via the Sponsoring Department:

6. Completed **BioData Form** – please use the **H-1B Biodata Form**
7. Current Curriculum Vitae
8. Evidence the visitor has the required degree by submitting either:
 - A copy of the person's U.S. baccalaureate or higher degree which is required by the specialty occupation; or
 - A copy of the foreign degree and evidence it is equivalent to the U.S. degree. (Generally established through a credential evaluation); or
 - Documented education, specialized training, or progressively responsible experience that is equivalent to the U.S. degree required by the offered job.
9. Copies of any and all current and previously issued immigration documents that reflect a complete history of visitor's entries and stay within the U.S.:
 - Australian passport
 - Visa Stamp(s)
 - I-94 Form(s)
 - I-20, IAP-66, DS-2019, I-797 and/or other forms indicative of prior and current immigration status while in the U.S
 - When on a J-1 visa in the past, the visitor must provide evidence of not having been subject to the two-year home residency requirement, having fulfilled the requirement, or having obtained a waiver of the requirement.

Application Process

Instructions for completing the E-3 packet:

Hiring departments are welcome to prepare a **draft** E-3 visa request packet for the Office of International Affairs to review and prepare an Advisory prior to requesting Dean's approval of the E-3 petition.

1) Memorandum of Support:

Have the Chairman of the Department prepare a memorandum seeking institutional support from the appropriate Vice President or Dean. The memorandum must contain the following information:

- a) Identify the individual you want to support, indicating if this is an initial, modification, extension, transfer, or concurrent E-3 petition request, and state the visitor's qualifications that satisfy the requirement of "possessing highly specialized knowledge." Also, indicate the hours and base rate of pay offered – list how many hours per week and the annual salary. If the applicant is on a part-time basis list the hours per week along with the hourly rate.
- b) State the job title and description; salary; and, period of appointment;
- c) State that all E-3 non-immigrants will be paid at least the actual wage level paid to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupation in the area of employment, whichever is higher. If there are no employees, so state;
- d) State that the Department will pay the reasonable cost of return transportation for the visitor if the visitor is dismissed from employment before the end of the period authorized admission;
- e) State that the Department will provide accurate information for reviewing deemed exports license requirements and ensure continuous compliance with U.S. Export Control regulations regarding the Release of Controlled Technology or Technical data to Foreign Persons in the United States; and,
- f) State that the terms of the approved labor condition application will be fully complied with.
- g) On the last page of your correspondence, type: () Approved () Disapproved

By: _____ Date: _____

2) Application for Prevailing Wage Determination – ETA Form 9141 - U.S. Department of Labor:

- Complete the Prevailing Wage Determination ETA Form 9141 – **SECTION D** on **pages 1, 2 and 3 only**:
 - Part a: Job Description
 - Part b: Minimum Job Requirements
 - Part c: Place of Employment Information
- Page 1 Sections A, B, & C will be completed by OIA and page 4 will be completed by DOL, Office of Foreign Labor Certification (OFLC) National Prevailing Wage Center (NPWC) in Washington, D.C. *For a full explanation of the questions that make up Application for Prevailing Wage Determination refer to the **ETA Form 9141 – General Instructions** in the OIA web page.*

3) Actual Wage Form:

- a) Employees - list all employees in your department who hold the same job title as the one to be accorded to the E-3 applicant. Use additional sheets as needed.
 - i. Education - Indicate each employee's degree or educational equivalency;
 - ii. Experience – indicate each employee's years of experience accrued since the degree awarded [see III (a). (1)]; and,
 - iii. Salary - indicate the current salary of each employee listed.
- b) Exclusions - Draw a single line through any person listed that you do not consider to be a peer of the H-1B applicant. State specific reasons why they should not be considered as peers. Reasons should relate to:

- i. Experience - length, type, relevancy, specialized knowledge.
 - ii. Education – degree(s), class rank, GPA.
 - iii. Job responsibilities – major differences in the job duties performed such as major tasks, supervisory responsibilities.
 - iv. Other legitimate business factors – professional distinctions, awards, publications, documented meritorious performance.
- c) Identify the highest salary of the employees whose names have not been eliminated. This will be the actual wage. As previously stated to support the E-3 either the prevailing wage or the actual wage, whichever is the higher, must be paid to the E-3 applicant and all peers.
- d) Have the preparer, Chairman of the Department, and appropriate Vice President or Dean sign the actual wage form
- **By signing the actual wage form, the Department Chair understands that the exclusions must be defensible in a court of law, and should we be challenged on any of the exclusions, it would be the Department Chair's responsibility to defend the exclusions. Consequently, Departmental personnel records must be properly documented.**

4) US Export Controls Verification Form

Have the designated administrative officer complete the US Export Controls Verification form. This form must be signed by the Direct Supervisor and Department Chairman.

5) Employer fees:

- a) All E-3 petitions (initial, extensions, modifications, or transfers) are subject to a **\$325.00** application fee. The \$325.00 fee **must** be an institutional check payable to **US Department of Homeland Security. No personal checks will be accepted.**
- b) All E-3 (filed as initial for someone outside the U.S.; transfer for a new employee who is currently on an H-1B with another employer; or, as a change of status for someone with the institution but on a different visa status) petitions are subject to the Fraud Prevention and Detection Fee of **\$500.00. This fee must be paid by the institution seeking to sponsor an initial H-1B non-immigrant classification or seeking to change a beneficiary's employer. The fee is not applicable to petitions filed as modifications or extensions by the existing E-3 employer. Institutions of Higher Education ARE NOT exempt from the \$500 fee.** The \$500 fee **MUST** be an institutional check made payable to **US Department of Homeland Security – No personal checks will be accepted.**
- c) Premium Processing fee **\$1225.00 (optional)** - Departments may wish to pay this fee in order to expedite H-1B applications **once they are received by USCIS.** USCIS regular processing is taking between 120 and 180 days to process. Premium Processing shortens the response time (e.g. approval, denial, or request for further evidence) to 30 days. If opted, the premium processing fee **MUST** be an institutional check made payable to **US Department of Homeland Security – No personal checks will be accepted.**
- d) Institutional checks sent to OIA for E-3 applications (as indicated above) **must** identify the name of the individual for which the check is to be used. Failure to have this noted on the check will result in delays of processing the application.

Forward the Chairman's memorandum, prevailing wage form, actual wage form, and attachments to the appropriate administrative office. Instruct the appropriate office to send the memorandum and all supporting documents to the Office of International Affairs when the approval or disapproval is given. The approval triggers the submission of the Prevailing Wage to the appropriate agency. Upon receipt of the of the prevailing wage survey, if there are no salary discrepancies, the Labor Condition Application (LCA) will be submitted to the Department of Labor. At this point the first official contact with the visitor will be made.

After the Department of Labor approves the LCA and if the international visitor selects to secure the E-3 visa from the U.S. Embassy or Consul abroad, the original Labor Condition Form will be mailed to the visitor abroad with detailed instructions on the visa application process. **If the visitor will be entering the U.S. from abroad, it is important to note that entry into the U.S. cannot be made any earlier than 10 days prior to the begin date on the approval notice.**

If the visitor selects to apply for the E-3 status in the U.S, the visitor will be notified of the documents required for this application and the Department will be notified of the fees required. As soon as the visitor's documents and institutional fees are received, the Office of International Affairs staff will complete the E-3 application and will submit all documents to the U.S. Citizenship & Immigration Service. The Office of International Affairs will notify the department and the visitor when USCIS approves the E-3 petition.

It is important that the department and the visitor understand the visitor's employment is contingent upon always having the appropriate working visa.

In addition, the institution is liable to begin paying wages no later than 30 days after the E-3 nonimmigrant first enters the U.S. in E-3 status, or no later than 60 days after a change of status becomes effective, if the nonimmigrant changed status in the U.S.

The Office of International Affairs stands ready to assist you and the visitor in complying with the procedures outlined above. If you have any questions needing immediate attention, please do not hesitate to contact the Office of International Affairs at (713) 500-3176. The Office of International Affairs is located in the University Center Tower, 7000 Fannin, Suite 130. The office hours are Monday – Friday from 8:00 a.m. to 5:00 p.m.