

H-1B Request for Evidence: Common Questions and How to Prepare

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There are six common requests for evidence from USCIS. This article will quickly outline what these requests are. The most common requests for evidence from USCIS are the following:

1. Needs of the Petitioner for the Services of the Beneficiary
2. Specialty Occupation
3. Maintenance of Status
4. Validation Instrument for Business Enterprises (VIBE)
5. Employer-Employee Relationship
6. Beneficiary Qualifications

Needs of the Petitioner for the Services of the Beneficiary

This occurs most often with small businesses seeking to employ aliens in a professional role that is not common to the business. The evidence sought will show that the employee will serve in the specialty role acceptable for an H-1B visa, and not a position which would not qualify for H-1B visas. Additionally, the employer has to present evidence that the need for the employee is genuine.

Specialty Occupation

H-1B nonimmigrant visas are available for those who are performing 'specialty occupations' which require one of the following:

- A bachelor's degree (or equivalent) is generally a minimum requirement for the position.
- The degree requirement is usual in the industry for the type of position.
- The position requires complexity such that it can only be done by someone with a specific degree.
- The employer usually requires a degree for the specific role.

A request for evidence often includes the job posting (i.e., was a degree a requirement?), evidence of how the position is filled in the industry generally, or more information about the duties of the job (is it so complex that a degree is necessary for it?).

Maintenance of Status

This request for evidence occurs when an H-1B visa holder is trying to either change status or maintain status; the holder must show that the status never expired. If you are seeking to maintain your H-1B status, showing recent pay stubs will often suffice. If you are a student with an F-1 visa, evidence regarding class (such as assignments, grades) will usually be enough evidence to show that status was maintained.

Validation Instrument for Business Enterprises (VIBE)

A VIBE request occurs when the USCIS' database does not match the information provided by the employer in the H-1B petition. USCIS is seeking to authenticate information about the business. They are looking for evidence that the business exists, which can include tax identification numbers or tax returns, articles of incorporation, or payroll documents. Any evidence that proves that the business is in operation will likely be sufficient.

Employer-Employee Relationship

This request for information is likely to occur if the employee works off-site or when the employee is working in a consultant role. USCIS is looking for evidence that there is an actual employer-employee relationship. Evidence should be submitted showing that the employer has effective control over the employee's work and how the work is completed.

Beneficiary Qualifications

Positions eligible for H-1B visas require at least a bachelor's degree, and the person working in that role must have the degree required for the position. A request for evidence will likely be asking one for the following: evidence of how the worker's degree relates to the position if the field is different or for evidence that a foreign degree is equal to a Bachelor's degree earned in the U.S. In lieu of a degree, three years of professional experience may be used to fulfill the beneficiary qualifications and a request for evidence may be necessary to evaluate whether the experience meets the standard for "professional." One of the most common ways to submit evidence of experience is by using referral letters from past supervisors and employers.