STUDY NOTES · BASIC CONCEPT

What Is an H-1B Visa? Difference Between a Visa, Immigration Status and a Green Card?

Indian Economy

16 Oct 2026

Concept 1: What Is an H-1B Visa?

The H-1B is a US nonimmigrant employment classification that allows eligible US employers to employ foreign workers in specialty occupations, subject to immigration law and applicable requirements.

A specialty occupation generally requires the application of specialised knowledge and a relevant bachelor's degree or its equivalent, subject to the legal criteria.

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT

Major features

1. It is employer-petition-based: a qualifying employer generally files a petition for the worker.
2. The position must satisfy the applicable specialty-occupation requirements.
3. The employer and worker must meet relevant eligibility and compliance obligations.
4. H-1B status is temporary, although extensions may be available under applicable rules.
5. H-1B status does not itself grant permanent residence or citizenship.

- Some employers and petitions are subject to annual numerical limits, while specified categories may qualify for exemptions.

Why is it important to India?

India has a large pool of technology professionals and other skilled workers employed by US companies. Changes to H-1B rules can therefore affect professional mobility, IT services exports, family stability and the movement of specialised skills between India and the United States.

Concept 2: What Is the Difference Between a Visa, Immigration Status and a Green Card?

These terms are related but are not interchangeable.

Term	Meaning
Visa	A travel document issued by a US consulate or embassy that generally permits its holder to seek admission to the United States in the relevant classification
Immigration status	The legal classification under which a person is permitted to remain in the United States
H-1B status	Temporary status for eligible specialty-occupation employment
Green Card	Evidence of lawful permanent resident status
US citizenship	A separate legal status that may be obtained through applicable naturalisation or other legal pathways

BECOME IAS
An Exclusive UPSC Preparation by ZINKPOT

Important distinction: A valid visa does not automatically guarantee admission at the US border. Similarly, holding H-1B status does not automatically lead to a Green Card.

A person may be eligible to pursue employment-based permanent residence while working in H-1B status, but that process involves separate legal requirements and approvals.

Concept 3: What Is USCIS?

The United States Citizenship and Immigration Services (USCIS) is the federal agency responsible for administering many immigration benefit applications and petitions.

Its responsibilities include:

1. Processing employment-based immigration petitions.
2. Adjudicating applications for adjustment of status and permanent residence.
3. Administering naturalisation.

4. Processing certain work authorisation applications.
5. Reviewing evidence submitted in support of immigration benefits.
6. Detecting fraud and enforcing applicable programme requirements within its jurisdiction.
7. In the H-1B system, employers generally file petitions with USCIS, which determines whether the applicable requirements have been met.
8. USCIS is part of the Department of Homeland Security (DHS).

Concept 4: What Is the Department of Homeland Security (DHS)?

The Department of Homeland Security is a major US federal department responsible for domestic security, border management and several immigration-related functions.

It oversees agencies such as:

1. USCIS: Immigration benefit applications and petitions.
2. US Customs and Border Protection (CBP): Border inspection and admission functions.
3. US Immigration and Customs Enforcement (ICE): Immigration enforcement and certain investigative responsibilities.
4. The division of responsibilities matters because visa issuance, petition adjudication, border admission and immigration enforcement are not all handled by the same agency.

Concept 5: What Is the Principle of Deference to Prior Approvals?

In administrative decision-making, deference generally means giving weight or respect to an earlier determination rather than reconsidering the matter entirely from the beginning.

In the H-1B context, the regulation introduced in 2024 generally required USCIS to defer to a prior eligibility determination when adjudicating a Form I-129 petition involving the same parties and underlying facts, unless there was a material error, a material change or new material information that adversely affected eligibility.

The DHS proposal published on 14 October 2026 seeks to remove this regulatory requirement.

How would the proposal change the process?

Illustrative example:

A US employer receives approval to employ a foreign professional in an eligible specialty occupation. Later, the employer submits an extension petition involving the same employer, employee and underlying facts.

- Under the existing deference regulation, USCIS generally gives weight to the earlier eligibility determination, subject to specified exceptions.
- Under the proposed approach, USCIS would not be required to defer to the earlier decision. It could reassess the evidence and determine whether the current petition satisfies the legal requirements.

This does not mean the earlier approval becomes irrelevant. USCIS could still consider it where appropriate.

Why does this matter?

BECOME IAS

A prior approval can create reasonable expectations for workers and employers. Removing mandatory deference may strengthen fresh review and error detection, but it may also increase uncertainty, administrative costs and processing burdens.

AI-Powered UPSC Preparation by ZINKPOT

Concept 6: What Is Form I-129?

Form I-129 is the US petition used by employers to request certain nonimmigrant worker classifications.

It is used for several categories of temporary employment, including H-1B and L-1 workers, among others.

The proposed removal of deference applies to relevant benefit requests filed using Form I-129, rather than being limited to H-1B petitions alone.

UPSC point: Form I-129 is an employer petition, not the same as a visa application submitted by an individual at a US consulate.

Concept 7: What Is a Request for Evidence (RFE)?

A Request for Evidence is a formal notice issued by USCIS when additional information or documentation is required to assess an immigration petition or application.

An RFE may request evidence relating to:

1. The nature and duties of the job.
2. The worker's qualifications.
3. The employer–employee relationship.
4. The legitimacy of the employment arrangement.
5. The duration and location of the assignment.
6. Compliance with applicable legal requirements.
7. An RFE is not automatically a denial. It gives the petitioner an opportunity to respond with relevant evidence within the specified timeframe.

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT

However, additional evidence requests can increase legal costs, administrative work and processing time.

The DHS proposal anticipates that removing mandatory deference could increase evidence requests and impose additional costs on petitioners and USCIS.

Concept 8: What Is the Annual H-1B Cap?

The H-1B programme has statutory annual numerical limits for many new employment petitions.

The commonly cited annual cap is:

1. 65,000 regular cap numbers.
2. 20,000 additional numbers for eligible beneficiaries with qualifying US advanced degrees.
3. Certain employers and categories may be exempt from the annual cap, subject to the law and applicable rules.
4. Examples of potentially cap-exempt employers include qualifying institutions of higher education and certain affiliated nonprofit entities or research organisations.
5. The DHS's separate H-1B reform agenda has proposed changes to cap exemptions, employer compliance and oversight of third-party placements. These are distinct from the October 2026 proposal concerning deference to earlier approvals.

UPSC takeaway: Do not confuse an annual cap with the number of all H-1B workers currently employed in the United States. Existing workers, extensions, exemptions and new cap-subject petitions are different categories.

Concept 9: What Is an Employer–Employee Relationship?

H-1B petitions generally require a qualifying employer to petition for the worker and establish that the proposed employment meets applicable legal requirements.

The employer–employee relationship is particularly relevant where a staffing or consulting company employs a worker who performs services at a third-party client's premises.

Relevant evidence may include:

1. Employment contracts.
2. Client agreements and work orders.
3. Job duties and work assignments.
4. Payroll and supervision arrangements.
5. The expected duration and location of the work.
6. Third-party placement arrangements are not automatically unlawful. The issue is whether the particular arrangement meets the applicable requirements and is supported by credible documentation.

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT

Concept 10: What Is the Difference Between H-1B, L-1, H-4 and F-1?

Visa or status	Main purpose	Key distinction
H-1B	Specialty-occupation employment	Requires a qualifying employer petition and eligible position
L-1	Intracompany transfer	Allows qualifying employers to transfer certain employees from a foreign office to a related US entity

Visa or status	Main purpose	Key distinction
H-4	Dependent status	Generally for eligible spouses and children of certain H visa holders
F-1	Academic study	For eligible international students pursuing academic studies
Green Card	Permanent residence	Not a temporary nonimmigrant visa classification

Some H-4 spouses may qualify for employment authorisation under specific conditions. Eligibility is not automatic for every H-4 holder.

The proposed deference rule is relevant to covered nonimmigrant worker petitions and is not equivalent to a blanket cancellation of these visa categories.

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT

Concept 11: What Is the Difference Between a Proposed Rule and a Final Rule?

This is particularly important for interpreting current affairs.

In the United States, federal agencies often use a formal rulemaking process to create or amend regulations.

1. Proposed Rule : The agency publishes the proposed change and explains its rationale.

2. Public Comments : Affected individuals, businesses and other stakeholders submit comments and evidence.

3. Final Rule : The agency reviews the record and may adopt, revise or withdraw the proposal.

4. Effective Date and Implementation : The final regulation takes effect according to its terms, subject to applicable legal requirements and any court orders.

For the October 2026 deference proposal, the public comment deadline is 13 November 2026. The proposal should not be described as a final rule or an already implemented change.

Concept 12: How Could Stricter H-1B Scrutiny Affect India?

India is likely to be significantly affected because Indian professionals form a large share of H-1B beneficiaries, particularly in technology-related employment.

Possible effects

Area	Potential impact
Indian professionals	More documentation and uncertainty during extensions
Indian IT companies	Higher legal, compliance and administrative costs
US employers	Greater burden in demonstrating eligibility and maintaining records
Families	Uncertainty over continued employment and related immigration planning
Services exports	Possible changes in the cost and organisation of cross-border service delivery
Remittances	Potential indirect effects if overseas employment or earnings are disrupted
Talent mobility	Greater incentives to explore other markets or domestic opportunities

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT

These are potential consequences, not guaranteed outcomes. The actual impact depends on the final regulation, individual petitions and the response of employers.

Concept 13: What Is Brain Drain and Brain Gain?

Brain drain refers to the movement of skilled and educated people from their home country to another country, often for better employment, research or living opportunities.

Brain gain refers to benefits that a country obtains through skilled migration, returning professionals, overseas networks, investment, knowledge transfer and international collaboration.

Skilled migration can have both positive and negative effects on India.

Potential benefits

1. Foreign exchange earnings and remittances.
2. International professional experience.
3. Access to advanced technology and research.
4. Overseas business networks.
5. Investment and knowledge transfer.

Potential challenges

-
- Loss of some highly skilled workers from domestic industries.
- Shortages in selected specialised sectors.
- Dependence on foreign immigration systems.
- Uncertainty for families and workers when visa rules change.

India can strengthen brain gain by creating attractive domestic research and employment opportunities, encouraging professional collaboration with the diaspora and making it easier for experienced professionals to contribute to Indian institutions.

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT

Concept 14: How Does the H-1B Issue Affect India–US Relations?

India and the United States have extensive economic, technological, educational and strategic ties. Skilled migration is one part of this relationship.

Immigration rules are a sovereign matter for the United States, but changes affecting Indian professionals can have wider bilateral consequences.

Key issues include:

1. Mobility of skilled professionals.
2. Trade in information technology and business services.
3. Research and innovation partnerships.
4. Family and educational links.
5. Competitiveness of Indian technology firms.
6. Bilateral dialogue on predictable immigration procedures.

7. India can raise concerns through diplomatic channels while recognising the US government's authority to administer its immigration system.
8. A constructive approach should focus on transparent rules, fair treatment, predictable procedures and mutually beneficial technology cooperation.

Concept 15: What Should India Do? — Way Forward

India should pursue a combination of diplomacy, domestic capability-building and market diversification.

1. Strengthen bilateral dialogue: Engage with US authorities on transparent and predictable immigration procedures.
2. Diversify export markets: Expand IT and professional services in Europe, the Middle East, East Asia and other markets.
3. Develop domestic technology capabilities: Increase investment in research, AI, cybersecurity, semiconductors and advanced manufacturing.
4. Improve workforce skills: Prepare professionals for emerging technologies and high-value work.
5. Support affected workers: Provide reliable information about regulatory changes and encourage timely professional immigration advice.
6. Promote innovation at home: Create attractive research, entrepreneurship and employment opportunities in India.
7. Maintain diaspora engagement: Use professional networks to support investment, research and knowledge exchange.

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT

UPSC Syllabus Relevance

General Studies Paper II

- India–US relations.
- Bilateral agreements and international relations.
- Diaspora and migration-related issues.

General Studies Paper III

- Indian economy and services exports.

- Science and technology.
- Employment, skills and human capital.

Essay topics

- Skilled Migration: Brain Drain or Brain Gain?
- Technology, Talent and Global Economic Interdependence.
- Strategic Autonomy in an Interconnected World.

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT