


**From:** Derek Pennartz [Dpennartz@balglobal.com](mailto:Dpennartz@balglobal.com)   
**Subject:** RE: Facebook | Lu, Yanxin | H-1B Cap | Follow Up for Initial Information  
**Date:** December 20, 2018 at 18:45  
**To:** Yanxin Lu [yanxin.lu@rice.edu](mailto:yanxin.lu@rice.edu)  
**Cc:** Lauren Thompson [lthompson@balglobal.com](mailto:lthompson@balglobal.com), FBHCAP [FBHCAP@balglobal.com](mailto:FBHCAP@balglobal.com)



Hi Yanxin,

Please see my responses to your specific questions below.

Please let us know if you have any further questions.

Regards,

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**Derek Pennartz** Associate, Attorney at Law\*

**B · A · L**

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\*Admitted in Texas. Practice limited to federal immigration law. Confidentiality Notice: This message may contain confidential client communications. If you are not the intended recipient of this message, please forward the original message (and any copies). Thank you.

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**From:** Yanxin Lu [<mailto:yanxin.lu@rice.edu>]  
**Sent:** Thursday, December 20, 2018 1:10 PM  
**To:** Derek Pennartz <[Dpennartz@balglobal.com](mailto:Dpennartz@balglobal.com)>  
**Cc:** Lauren Thompson <[lthompson@balglobal.com](mailto:lthompson@balglobal.com)>; FBHCAP <[FBHCAP@balglobal.com](mailto:FBHCAP@balglobal.com)>  
**Subject:** Re: Facebook | Lu, Yanxin | H-1B Cap | Follow Up for Initial Information

Hello Derek,

I'm sorry to bother you again. May I ask the following questions:

1. My Designated School Official told me that filing an I-290 form to appeal is definitely an option. The problem now is that I don't have a good estimate of how long it will take. I've heard that it takes 6 months, but some said a month. I'm wondering if you have any observations on the processing time for appeals? **USCIS generally adjudicates I-290B applications within 6 months, but, processing times. We do not file these applications frequently, so I am unfortunately unaware of how long they generally take to be adjudicated.**
2. If instead I go back to China to apply for an H1B visa without appealing, will my OPT application denial record have a negative impact on my H1B visa application? **I would not expect application to negatively impact your H-1B visa application. If it comes up, I would simply recommend explaining to the consular officer that your application was denied because USCIS SEVIS record when it adjudicated your H-1B petition, and you did not become aware that this happened until the application was denied.**
3. Another question I have about applying for an H1B visa is about administrative processing time. May I ask how long it roughly takes according to the cases you observe? I've heard that it takes 3-6 weeks for H1B visa. Is this time range close to your observations? **Yes, this time range is similar to what we see when visa applicants report that they have been selected for**

Also, please ignore my last question about the degree requirement for H1B visa application; I have got the letter from my department.

I really appreciate your time and help!

Best,  
Yanxin

On Dec 19, 2018, at 17:35, Yanxin Lu <[yanxin.lu@rice.edu](mailto:yanxin.lu@rice.edu)> wrote:

Hello Derek,

Thank you so much for your detailed information. It clarified a lot of my concerns and I really appreciate that. One final question: If I go back to my home country and apply for I-290, will I have satisfied my Ph.D. degree requirement, as indicated in my offer letter? I have defended my Ph.D. thesis, but have not received my diploma yet. Can I just provide a transcript of my thesis and will be rewarded a Ph.D. degree in a few months as part of the support documents?

Thank you very much for your time!

Best,  
Yanxin

On Dec 19, 2018, at 17:24, Derek Pennartz <[Dpennartz@balglobal.com](mailto:Dpennartz@balglobal.com)> wrote:

Hi Yanxin,

First, because you remain within 60 days of your academic program end date, you are not accruing unlawful presence in the US. However, you will either need file a new I-290 application, or depart the US and activate your H-1B status within 60 days of your program end date.

We have seen F-1 SEVIS records mistakenly cancelled by USCIS even when H-1B Petitions are correctly adjudicated as a Consular Notify, as yours was. This may have caused your OPT application to be denied. Your Designated School Official should be able to reactivate your F-1 SEVIS record if you can provide him or her with a copy of your Consular Notify to prove that it was adjudicated as a Consular Notify. However, if you still plan to start employment with Facebook on January 14, then there likely will not be an issue with a new OPT application and have it approved in approximately three weeks. I would strongly recommend contacting your Designated School Official and confirming that an EAD can be appealed in order for an EAD to be issued in time for your anticipated start date.

In the alternative, if you still intend to begin employment on January 14, the only alternative would be to depart the US and make an appointment to apply for your H-1B visa at a consulate in your home country. You should be aware that some consulates currently have long wait times due to increased international travel during the winter holidays. You should be aware that we have seen an increase in administrative processing, a form of additional security background checks that can delay the issuance of your H-1B visa or even weeks. If your visa application is selected for Administrative Processing, then there is nothing that can be done to expedite the process. You must simply wait for the visa to be issued. Due to these additional factors, it is possible that your start date would need to be postponed even if you elect to travel and apply for your H-1B visa, so I would contact your recruiter once you decide how to proceed and alert them that your start date may need to be postponed.

Please let us know if you have any further questions.

Regards,

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Derek Pennartz Associate, Attorney at Law\*

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**From:** Yanxin Lu [<mailto:yanxin.lu@rice.edu>]  
**Sent:** Wednesday, December 19, 2018 11:59 AM  
**To:** Lauren Thompson <[lthompson@balglobal.com](mailto:lthompson@balglobal.com)>  
**Cc:** FBHCAP <[FBHCAP@balglobal.com](mailto:FBHCAP@balglobal.com)>; Derek Pennartz <[Dpennartz@balglobal.com](mailto:Dpennartz@balglobal.com)>  
**Subject:** Re: Facebook | Lu, Yanxin | H-1B Cap | Follow Up for Initial Information

Hello Lauren,

My name is Yanxin Lu, and I'm going to work for Facebook. It has been a long time since you guys helped me apply for my H1B. Thank you very much. Much appreciated

I'm just writing to see if I could schedule a phone call with you, because I have a few immigration questions about H1B and OPT. To be more specific, after I got the I-797E apply for OPT. However, my OPT application was rejected. I still haven't received the denial letter yet and I still don't know why it was rejected. However, I'm just trying to guys for some suggestions before the holiday starts. I'm also a little bit concerned about my legal status in the states at the moment and whether it will affect my application

I will be available for the whole week including this afternoon. Please let me know if we could talk over the phone for around half an hour. To provide more information, my number is WAC1814652712 and the case number on Cobalt system is 91.13190.2. I mailed my OPT application out on 08/22/2018, which is after I received my I-797B for

Thank you very much for your time!

Best,  
Yanxin

On Feb 6, 2018, at 11:11, Lauren Thompson <[lthompson@balglobal.com](mailto:lthompson@balglobal.com)> wrote:

No problem! Feel free to reach out with any further questions.

Best,

**Lauren Thompson** | Legal Assistant

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**From:** Yanxin Lu [<mailto:yanxin.lu@rice.edu>]  
**Sent:** Monday, February 05, 2018 2:12 PM  
**To:** Lauren Thompson  
**Cc:** FBHCAP; Derek Pennartz  
**Subject:** RE: Facebook | Lu, Yanxin | H-1B Cap | Follow Up for Initial Information

Hi Lauren,

Yes, please. I'm fine with us going forward with the Consular Notify approach, and thank you very much for answering my questions.

Thanks,  
Yanxin

On February 5, 2018 at 14:07:16, Lauren Thompson ([lthompson@balglobal.com](mailto:lthompson@balglobal.com)) wrote:

Hi Yanxin,

Yes, you will be able to use OPT and STEM for as long as you want. You'll just need to switch over to H-1B before the Approval notice expires, preferably before as to not cut it too close.

I will review your documentation and questionnaire and get back to you with more details on your case. Are you fine with us going forward with a Consular of now?

Thank you,

**Lauren Thompson** | Legal Assistant

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**From:** Yanxin Lu [<mailto:yanxin.lu@rice.edu>]  
**Sent:** Monday, February 05, 2018 2:01 PM  
**To:** Lauren Thompson  
**Cc:** Derek Pennartz; FBHCAP  
**Subject:** RE: Facebook | Lu, Yanxin | H-1B Cap | Follow Up for Initial Information

Hi Lauren,

Thank you very much for your clarification. Does it mean that as long as the H-1B approval notice doesn't expire, I can start working using my OPT and then STEM, hold the H-1E notice for a very long time and then find a time to go back to my home country to apply for an h-1b visa and come back to the states with it?

I just uploaded my wife's document and also my latest I-20 with the updated expiration date for my F-1 status. Please let me know if there's any other document needed.

Thanks,  
Yanxin

On February 5, 2018 at 11:51:57, Lauren Thompson ([lthompson@balglobal.com](mailto:lthompson@balglobal.com)) wrote:

Hi Yanxin,

Yes, you will need to do consular approval if you will not be working for Facebook on 10/1. You'll just need to go to a U.S. consulate in your home country either before your F-1 status expires or before the Approval notice for the H-1B expires. You will not be able to hold both, if you want to work with the work authorization provided by your OPT and then STEM until you go activate your H-1B, you can do that. The only deadline you'll have is to get it activated before the actual approval notice expires which will be sometime in 2021.

Thank you,

**Lauren Thompson** | Legal Assistant

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**From:** Yanxin Lu [<mailto:yanxin.lu@rice.edu>]  
**Sent:** Thursday, February 01, 2018 8:02 PM  
**To:** Lauren Thompson  
**Cc:** FBHCAP; Derek Pennartz  
**Subject:** RE: Facebook | Lu, Yanxin | H-1B Cap | Follow Up for Initial Information

Hello Lauren,

Thank you very much for your clarification. Actually, I will be defending my thesis and graduate in November and start working right after that. I assume that I have to choose Consular Approval approach because I won't be able to start working on 10/01?

If so, my question right now is: when do I need to go back to my home country and apply for an H-1B visa? Can I do that before my graduation, meaning that I will hold my visa AND my H-1B visa at the same time, enter the states using my F-1 visa and activate my H-1B visa right after I graduate? Or do I need to apply for an H-1B abroad after graduate and before my first day of work and activate my H-1B when entering the states?

Thank you very much for your help on our cases. I will upload my wife's documentation over the weekend and let you guys know.

Best,  
Yanxin

On February 1, 2018 at 17:46:35, Lauren Thompson ([lthompson@balglobal.com](mailto:lthompson@balglobal.com)) wrote:

Hi Yanxin,

Thank you for uploading those so promptly! I will review them and update you on your case. You will still be eligible, however, you will need to do Consular Notify instead of a Change of Status (Change of Status would require you to be working for the company on 10/1).

The **Consular Approval** approach would require you to go to a US Embassy abroad and obtain an H-1B visa. *If you specifically choose to have a Consular Approval, where a Change of Status was available to you, the cost of this trip will be your personal expense. If it is advised by BAL, that you need to use this filing option, travel expenses will need to be reviewed by Facebook.*

Yes, we will still need your wife's documentation in order to verify she will still maintain valid status without us preparing her an H-4.

Thank you,

**Lauren Thompson** | Legal Assistant

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**From:** Yanxin Lu [<mailto:yanxin.lu@rice.edu>]  
**Sent:** Thursday, February 01, 2018 11:24 AM  
**To:** Lauren Thompson  
**Cc:** FBHCAP; Derek Pennartz  
**Subject:** Re: Facebook | Lu, Yanxin | H-1B Cap | Follow Up for Initial Information

Hello Lauren,

I'm just writing to let you know that I've just uploaded all the documents I have at hand. Please let me know if there's anything needed.

BTW, I do have a few questions:

1. I won't be working at Facebook until December. Am I still eligible for applying an H-1b?
2. My wife is also a Phd student at UT Austin, and she is on F-1 and she won't be graduating until roughly 2021. Do I need to upload her documents as well?

Thank you very much for your time!

Best,  
Yanxin

On February 1, 2018 at 10:44:00, Lauren Thompson ([lthompson@balglobal.com](mailto:lthompson@balglobal.com)) wrote:

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# Hi Yanxin,

I hope you are well. I'm sending this email as a friendly reminder for you to submit the information outlined below.

Contact me or my manager with any questions:

Lauren Thompson  
Immigration Assistant  
[lthompson@balglobal.com](mailto:lthompson@balglobal.com)  
214-442-7353

Derek Pennartz  
Attorney  
[dpennartz@balglobal.com](mailto:dpennartz@balglobal.com)  
(214) 442-7368

## YOUR NEXT STEPS

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Submit your documents. Review the [document checklist](#) and the [H-1B Cap FAQ](#).

Complete the [questionnaire](#).

Notify us if you have any upcoming international travel plans.

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