



It's Time to Start Preparing for H-1B Cap Season

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The H-1B visa program allows companies in the United States to temporarily employ foreign workers in specialty occupations. Essentially, a specialty occupation is a professional position that requires an individual to possess a bachelor's degree or higher in a specific field of study to perform the essential duties of the position. On Monday, April 2, 2018, U.S. Citizenship and Immigration Services (USCIS) will begin accepting cap-subject H-1B petitions for fiscal year 2019. Demand is expected to be high, and this year's H-1B cap-subject petitions will almost certainly exceed the annual limitation (or cap) within the first week of April. This will trigger a computer-generated lottery selection process to determine who receives one of the 85,000 available H-1B slots, which include 20,000 slots reserved for candidates who have earned an advanced degree from a U.S. educational institution.

Employers should assess their H-1B employment needs now. Although the April 2, 2018 filing date is two months away, it takes time (i) for the company, in some cases, to receive Department of Labor (DOL) prequalification regarding the company's name and Federal Employer Identification Number, (ii) for the foreign national to gather and provide the materials required for the H-1B process, including copies of the foreign national's passport, visas, other immigration-related documents, college degrees and transcripts, etc., (iii) for the company to provide details and documentation regarding the offered job, worksite location, job description, proposed salary, etc., (iv) for the DOL to issue a certified Labor Condition Application (7 business days after electronic submission), and (v) if necessary, to obtain third-party expert reports or translations. In addition, during high-volume cap season, it can take several weeks to prepare an H-1B petition for submission to USCIS after we have received the required documentation.

Employers should identify current and prospective employees who need H-1B visa sponsorship, such as newly graduating foreign students in the United States, overseas workers who are seeking to start work in the United States in H-1B status, or foreign nationals present in the United States in another nonimmigrant status who may benefit from a change to H-1B status. Individuals who have been counted against the H-1B cap in the previous six years, including those who are seeking to extend their H-1B status or change employers, are not required to file cap-subject H-1B petitions. Candidates for

this fiscal year's H-1B cap may include, but are not limited to, the following:

- Recent college and university graduates present in the United States in F-1 status who are working pursuant to optional practical training (OPT) or STEM OPT;
- Candidates who are currently enrolled in school in F-1 status who may be working pursuant to curricular practical training (CPT);
- Candidates abroad who are subject to the annual H-1B cap;
- Candidates in another nonimmigrant status (e.g., L-1B) who are approaching the maximum limits of their status and would benefit from a change of status to H-1B;
- Candidates currently employed pursuant to H-4 employment authorization document (EAD) who wish to become independent of the spouse's H-1B status or who are concerned about continuity of the H-4 EAD program;
- Candidates in another nonimmigrant status who work for a different employer and would require an H-1B visa to change jobs; or
- Candidates in TN, E, or H-1B1, status for whom an employer is considering pursuing permanent residence.

Finally, while we fully expect that USCIS will continue its intense scrutiny of entry-level wages and positions, occupation degree prerequisites, and candidates' educational background, the early preparation of these H-1B petitions will provide the best opportunity for success.

Related People

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