

Client Alert



“H-1B Season” to begin April 1, 2016 – Employer Action Needed Now

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USCIS Will Complete the H-1B Cap Random Selection Process on April 7th

NOW is the time to identify employees who may need H-1B status to continue working in the United States and begin preparations to file an H-1B petition on April 1st.

U.S. businesses use the H-1B program to employ foreign workers in professional and specialty occupations including scientists, engineers, computer programming, medical and business professionals. U.S. Citizenship and Immigration Services (USCIS) will start accepting H-1B petitions on April 1st for the 85,000 H-1B petitions subject to the annual H-1B cap that may be approved for FY2017 which begins on October 1st, 2016.

USCIS will randomly select 85,000 petitions from all those it receives by April 7th and reject and return all unselected petitions with their filing fees. Last year it received 233,000 H-1B petitions in the first week of April. ***No cap subject H-1B petitions will be accepted by USCIS after April 7th for FY2017.***

Who Needs an H-1B Petition?

Current employees who:

- Were hired with Optional Practical Training (“OPT”).
- Are now in F-1 (student) status.
- Are in L-1B status.
- Are working in another nonimmigrant classification and who are being considered for “green card” sponsorship.
- Are working overseas and are being considered for US employment.

Prospective employees who:

- Are not now in H-1B status.
- Are in H-1B status, but working for a “cap exempt” employer (i.e. university/college or a non-profit government research organization).

Why Is Action Needed Now

- Before an H-1B petition may be filed with the USCIS, a Labor Condition Application has to be approved by the US Department of Labor. It takes from two weeks to 30 days to obtain this approval.
- Several hundred thousand applications will have to be documented and submitted to and processed by the Department of Labor before April 1st.
- Every employer is facing the same deadline and all petitions have to be prepared and documented, and regulatory matters satisfied before April 7th.
- With less than a 50% chance of any individual petition being selected in the lottery, filing for each eligible employee maximizes their selection chances, even if they may be able to maintain employment status through next year’s filing dates.

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What are the Specific Advantages of the H-1B Visa Status?

- H-1B is a “dual intent” status – meaning a foreign worker who has demonstrated the intent of becoming a U.S. resident (for instance, by starting a “green card” process) may maintain H-1B status. This doesn’t apply to many other nonimmigrant classifications such as TN or F-1.
- While the H-1B status is limited to six years, that limit may be extended indefinitely by starting a PERM process for the worker. Certain other time limited categories (such as L-1A or L-1B) may not be extended beyond their limits.
- In some circumstances, the spouse of an H-1B employee may obtain employment authorization.

Will We be Able to File Any H-1B Petitions After April 7th?

H-1B petitions may continue to be filed, without regard to the annual H-1B cap, to:

- Extend the amount of time a current H-1B worker may remain in the United States;
- Change the terms of employment for current H-1B workers;
- Allow current H-1B workers to change employers; and
- Allow current H-1B workers to work concurrently in a second H-1B position.

Next Steps

- Identify employees and new hires needing H-1B petitions.
- Contact us for more information and to begin the H-1B process.

Join AGG Partner Teri A. Simmons, who will be providing an in-depth analysis of the fundamentals as well as updates of the significant issues on Cap-Subject H-1B Petitions, in a webcast¹ on February 2, 2016.

¹ <http://www.agg.com/Emerging-Issues-on-Cap-Subject-H-1B-Petitions-in-2016-02-02-2016/>

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