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Archives;Immigration

There Is Still Time To File H-1B Visa Applications For 2012

Are you contemplating filing an H-1B petition for a current or potential employee? On August 26, 2011, the United States Citizenship and Immigration Services (USCIS) announced that it has received approximately 29,000 cap-subject H-1B petitions that were counted towards the 65,000 Fiscal Year 2012 cap. Additionally, USCIS accepted roughly 15,800 petitions towards the 20,000 visa cap for persons who qualified for the H-1B advanced-degree professional exemption. As a reminder, Fiscal Year 2012 begins on October 1, 2011, and H-1B petitions filed for this allocation must have a starting validity date of October 1, 2011 or later. USCIS will continue to accept cap-subject petitions and advanced-degree petitions until the statutory limits have been reached.

If you are not familiar with the H-1B visa classification, here are some quick facts:

Who is eligible?

The H-1B visa classification is for individuals employed in specialty occupations that require Bachelors degree in a particular field. The foreign worker must possess the required U.S. degree or an acceptable foreign alternative. In some cases, a combination of studies and relevant experience may be an acceptable substitute for the degree if it is determined by a credentials expert to qualify the foreign professional for the position.

What is the duration of an H-1B visa?

An H-1B visa may be granted for a period of up to 6 years, in 3 year increments. An advantage to this visa classification is that the person may be deemed to have dual intent, that is, having the intent to remain temporarily in the U.S. in H-1B status while at the same time having the intent to become a permanent resident of the United States. As a result of this dual intent provision, the person may stay in H-1B status longer than 6 years if a permanent residence application is pending.

Are there any prerequisites to filing an H-1B petition?

Prior to hiring an H-1B employee, an employer should confirm that the relevant job qualifies as a specialty occupation and that the prospective H-1B employee meets the qualifications for the job, including that he or she has a Bachelors degree or higher in a field related to the occupation and, if required, the appropriate state or local licenses. The employer must also calculate the prevailing wage or request a determination from the U.S. Department of Labor (DOL). Once the wage has been determined, the employer must submit a Labor Condition Application (LCA) covering the H-1B employee, which must be certified by the DOL. Workers in the same occupation must also be notified of the employers intention to hire an H-1B employee.



What are the sponsoring employers continuing obligations?

A sponsoring employer has several continuing obligations after the H-1B petition has been approved. Specifically, if the H-1B employee is assigned to a worksite not listed on the certified LCA, additional steps must be taken. These steps must include a new posting at the additional work site or the filing of a new LCA (with a new prevailing wage determination), depending on whether the new work sites are within an area of employment listed on the original LCA. Any material changes in the employment described in the H-1B petition must also be approved by USCIS through the filing of an amended H-1B petition.

The employer also has an obligation to maintain a public access file containing its LCA documentation and to produce this file to any person requesting it or to the DOL. The DOL may inspect an employers public access file based on either a complaint from an aggrieved party or on its own initiative.

Finally, the employer has an obligation to pay the costs of return transportation for any H-1B employee whose period of employment is terminated prior to the expiration date of the workers H-1B status.

[Click Here](#) for more information about the H-1B program and to keep up with the latest developments in the Fiscal Year 2012 cap season.