



Increase in Demand for H-1B Quota Suggests Employers Should Not Wait Beyond April 1, 2013, to File New H-1B Petitions

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Employers who hire foreign nationals often do so in a classification under U.S. immigration law known as "H-1B." This category is used often to fill jobs in occupations that typically require at least a bachelor's level education in a specialized field. Examples of jobs for which the H-1B category is used might include engineers, physicians, graphic designers, scientists, accountants, and teachers.

To hire a worker in H-1B status, an employer must obtain authorization from U.S. Citizenship and Immigration Services ("USCIS"). For many years, Congress has imposed an annual quota on the number of new H-1B cases USCIS can approve for a federal fiscal year (October 1 through September 30). An H-1B case can be filed up to 6 months in advance of the date an employer wants to hire a foreign worker. Hence, the earliest a case can be filed for the quota in an upcoming fiscal year is April 1 of the fiscal year before.

Prior to the downturn of the economy in 2008, the demand for H-1B workers consistently exceeded the annual quota. As a result, employers routinely filed all of their H-1B cases for an upcoming fiscal year on the April 1 before. USCIS then used a lottery to decide which cases it could process without exceeding the quota.

When the economy slowed, the demand for H-1B workers dropped dramatically, so it was no longer essential for an employer to file its H-1B cases for the next fiscal year by April 1 for the cases to have a shot at being processed. Over the last three years, however, the situation has changed. The period the quota for the next fiscal year has remained open after April 1 has gotten progressively shorter as the economy has improved.

For Fiscal Year 2011, the quota stayed open approximately nine months. For Fiscal Year 2012, the open period lasted approximately seven months. For the current fiscal year, 2013, the quota was only open for about two months.

It will therefore be prudent for employers who want to hire H-1B workers for Fiscal Year 2014, which starts October 1, 2013, to file their cases on April 1, 2013, lest they not be able to file at all. Considering the steps that need to be completed for filing, employers should begin the H-1B process in the next few weeks, if not



sooner.

Examples of foreign national prospects for whom employers may need to file H-1B cases include the following:

- Those in student (F-1) status who are currently employed based on Optional Practical Training (OPT) or Curricular Practical Training (CPT) authorization or who are about to complete their degree programs;
- Those currently working for another employer in another nonimmigrant status such as L-1;
- Those who may wish to change their nonimmigrant status to H-1B from another status, such as J-1 or TN; and
- Those recruited from overseas.

The annual H-1B quota mandated by Congress is 65,000, with an additional 20,000 reserved for those who hold U.S. master's degrees or higher. A limited number of employers - higher educational institutions, nonprofit entities affiliated with higher educational institutions and nonprofit and government research organizations - are not subject to the quota. A limited number of foreign nationals, such as those who have previously been counted towards the quota and granted H-1B status and physicians who have received "Conrad 30" waivers, are also exempt from the quota.

To discuss this alert or any immigration law matter, please contact your Lathrop Gage attorney or any of the attorneys listed on this alert.