

Immigration Answers: The H-1B Visa

By Erin Brown

With the number of skilled foreign national graduates and workers growing at an extraordinary pace, more and more people are looking to come to the United States through employment-based immigration opportunities. One of the most common of these opportunities is the H-1B visa. The H-1B is a unique category that allows skilled foreign nationals to work in the United States and in some cases begin the journey towards eventual citizenship. However, with deadlines quickly approaching, anyone interested in sponsoring an H-1B employee or applying for an H-1B needs to start making arrangements immediately.

H-1B visas are reserved for individuals that are employed within a *specialty occupation*. An applicant must show that he or she has obtained at least a bachelor's degree (or foreign equivalent) and must have a job offer from a U.S. employer. The

most common H-1B applicants are those working in the medical, engineering and high-tech fields, although almost all employment areas are eligible. By offering an H-1B applicant employment, the U.S. employer must certify that the applicant will be paid a fair wage and that the applicant will only work in the position specified in the submitted application.

The H-1B is attractive for many reasons. Although the length of an H-1B is dependant upon the specific requirements of the job, most H-1B visas are available for three years and can be extended for up to six years. In limited circumstances, the H-1B can be extended beyond the six year time frame. H-1B recipients are also allowed to bring their spouses and underage children to the United States once they are granted H-1B status (these family members will be considered *H-4 visa holders*). H-4 recipients may remain in the United States for the duration of the H-1B with the primary H-1B holder. In certain limited situations, H-4 recipients may now also obtain employment authorization. Additionally, an H-1B recipient can travel in and out of the country, therefore, allowing them to return to their home country should they need to do so.

The number of H-1B visas available each fiscal year is capped. Congress has limited the number of available H-1B visas to 65,000, all of which are typically distributed within a few days after the U.S. Citizenship and Immigration Service (USCIS) begins accepting applications. An advanced degree exemption is available for the first 20,000 petitions filed for a beneficiary who has obtained a U.S. master's degree or higher. The lim-

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ited number of available petitions makes early planning a must for anyone looking to obtain an H-1B visa. Newly issued visas for the 2017 fiscal year become available on April 1, 2016, therefore, requiring an applicant to begin preparing the application promptly and have it submitted to USCIS within days of this opening date is crucial. USCIS reported a total count of 233,000 H-1B applications for the 2016 fiscal year. Of those applications, USCIS used a computer-generated random selection process to select enough petitions to meet the 65,000 general-category cap and the 20,000 cap under the advanced degree exemption.

Individuals seeking employment with nonprofit organizations, universities or governmental research laboratories are excluded from the cap and therefore, can still obtain an H-1B after the cap visas are exhausted.

With the right amount of planning, a U.S. employer can hire a skilled foreign worker with an H-1B visa and begin the process of building a future life in the United States.

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