

TIS THE SEASON TO BE JOLLY AND TIS ALMOST 2017 H-1B SEASON.

As a reminder to all U.S. employers, H-1B season is almost here! United States Citizenship & Immigration Services (“USCIS”) will start accepting new H-1B petitions for fiscal year 2017 on Friday, April 1st, 2016. As such, employers should start immediately identifying current and future employees who will require sponsorship for new H-1B petitions. By way of background, the USCIS issues H-1B visas to foreign workers serving in “specialty occupations at a professional level.” A specialty occupation requires theoretical and practical application of a body of highly specialized knowledge, to be performed by a worker with at least the equivalent of bachelor’s degree in the field. Both the position to be filled and the foreign worker’s qualifications must meet the criteria for a specialty occupation.

The statute provides for an annual quota of 65,000 new H-1B visas that can be issued in any given fiscal year, which runs from October 1st to September 30th. In addition, there is a separate quota of 20,000 H-1B visas per fiscal year for graduates of U.S. advanced degree programs, for a total of 85,000 H-1B visas. Last year, USCIS received 235,000 H-1B petitions within the first week of filing. Because the annual quota has been met within days of the first day of filing (April 1st, which is six months before the start of the fiscal year) on a consistent basis, all petitions are subject to a random computer lottery system. As such, only those petitions selected in the lottery may proceed to adjudication. Given last year’s H-1B demand and the seeming improvement in the economy, we are expecting that this year’s H-1B demand will be even greater than last year. Affected foreign nationals whose petitions are not chosen will be unable to obtain an H-1B visa until the next fiscal year and may be required to forgo employment with employers and possibly leave the United States. In such instances, employers will need to look at alternative visas (such as the L, O, P and R) for affected employees.

We strongly urge our client employers to consider filing H-1B cap-subject petitions with USCIS on the earliest possible date in fiscal year 2017. Ideally, this would mean mailing the petition to USCIS on March 31st, 2016 for delivery to USCIS on Friday, April 1st, 2016, the very first day of filing. But obtaining an H-1B visa for an employee requires advance planning. It can take sometimes two to four weeks to gather all of the necessary information and supporting documentation, file the Labor Condition Application (LCA), and prepare the petition for filing with USCIS. As such, employers should begin gathering the necessary supporting documentation in order to initiate cases immediately. With the H-1B season almost upon us, employers should not hesitate or wait to contact immigration counsel to begin working on cap-subject petitions. For more information about the H-1B professional and specialty occupation work visa, please feel free to contact us at 201-670-0006 (x104). Our Client Relations Manager and our U.S. Immigration and Nationality Lawyers will be pleased to assist you.