

## **HOW TO ASK YOUR EMPLOYER ABOUT DOING AN H-1B FOR YOU IF YOU ARE IN OPTIONAL PRACTICAL TRAINING (OPT) OR ON A STEM OPT EXTENSION.**

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**We are in the midst of the H-1B season. If you have not yet begun to prepare the H-1B for the April 1st filing date, do not despair. It is not too late. It will take about a week or so to submit and receive an approval for the Labor Condition Application (LCA - Form 9035) from the U.S. Department of Labor (DOL) but there is still time. The most important thing to do now is to immediately ask your employer to submit an H-1B Petition on your behalf.**

**Asking your employer to submit an H-1B Petition may be a bit uncomfortable so we are providing a few tips for the H-1B “want-to-be” that may help them to understand the value and importance of initiating the H-1B Petition:**

- 1. Since the potential H-1B candidate has, by now, been working for the prospective H-1B employer, the H-1B employer is aware of the excellent value that is added to the organization and continue to be added if the employer agrees to sponsor the foreign national for the H-1B Petition.**
- 2. The prospective H-1B Beneficiary has already spent some time with the potential H-1B employer, and the cost to the employer (if it loses the potential H-1B candidate) can be significant. Any HR Manager and/or Professional would agree that the cost for training is a severe drain on a company’s resources.**
- 3. The additional cost for a recruiter to assist with the location and implementation of a discrete skill-set, like the one already possessed by the OPT employee, is relatively significant compared to the low cost of the employer’s investment in submitting the H-1B nonimmigrant visa Petition.**
- 4. The filing fee depends upon the type and size of H-1b employer. It can range from \$1,575.00 to \$5,550.00. Although employer is required by the law to pay for the filing fee and costs associated with the H-1B, certain costs, such as premium processing fee, can be borne by the prospective H-1B employee. Be sure to carefully review the Law to determine what costs for the H-1B can be allocated to the employer and what costs can be paid for by the prospective H-1B employee.**
- 5. While it is highly likely that there is going to be a Lottery (technically referred**

to as “Random Selection Process”) this year, if the employer does not try to obtain the H-1B visa in the earliest cycle then it will potentially forgo the opportunity to have “a second bite at the apple” (by applying in later H-1B cycles for the potential H-1B employee).

6. The H-1B nonimmigrant visa is prospective in nature and has nothing to do with H-1B submission. It has to do with what will be happening on or about October 1st. In simple terms, not having work for the potential H-1B employee at this moment will not jeopardize the H-1B Petition submission. The employer needs to only demonstrate that there WILL be work for the potential H-1B candidate in October. This may, for some employers, raise the comfort level for their wanting to submit the Petition.

7. Once the H-1B petition has been submitted the potential H-1B employer will be able to continue to the OPT student in OPT status while the H-1B petition is pending or until October 1st assuming a favorable outcome with regard to the H-1B nonimmigrant petition.

8. While it is true that the H-1B filing on April 1st this year is highly likely to be a “lottery”, if the petition is not chosen under the H-1B cap, the filing fees are returned by the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services.

9. Be sure to locate a U.S. immigration law counselor who is able to carefully and patiently explain the H-1B work visa process to the prospective H-1B employer and employee. The immigration and nationality lawyers and attorneys at the Nachman Phulwani Zimovcak (NPZ) Law Group continue to find that key to success in the H-1B process for employers that are not familiar with the process is that the employer fully understands the process. Thus, our immigration specialty staff goes to great lengths to patiently explain the H-1B process and to help the employer and the employee understand the issues that each party may encounter in the H-1B application process.

10. Be sure that your immigration law counselor explores all H-1B alternatives. It is important to understand that the H-1B is only one of many nonimmigrant work visa options and that if the H-1B nonimmigrant visa is not chosen under the cap on April 1st, there may still be some options for the potential H-1B employer and employee.

**As we continue to say about other lotteries... “If you are not in it... you cannot win it.” Let us help you and your staff understand how to, at least, get “in” it.**

**We trust that the foregoing tips are helpful to H-1B employer and employee hopefuls alike. Of course, if you or any member of your staff should have any questions with regard to the preparation and submission of an H-1B Petition on April 1st, please feel free to contact any of our lawyers or immigration specialists by e-mailing us at [info@visaserve.com](mailto:info@visaserve.com) or by calling our office at [201-670-0006](tel:201-670-0006) (x107).**