

H-1B Visas: Make Sure you Get your Visa for 2012 **---Be among the first to file---**

The H-1B visas are subject to a 65,000 numerical limitation cap per year. There is an additional 20,000 visas set aside for those applicants with Advanced Degrees who have obtained a Masters Degree from a US University. There are also cap-exempt petitions available.

Here is a summary of how to obtain the approval of the H-1B petition.

There are 3 basic steps in the H-1B visa process.

Step 1: Get an employer in the US as the sponsor for the employment contract and the H-1B visa.

Step 2: Gather all the documents needed to file for the H-1B visa with the United State Citizenship and Immigration Service [USCIS]

Step 3: File the petition, and wait for adjudication and visa issuance

When does the annual cap start?

The fiscal year for the US government starts on October 1st of each year. So, on October 1, 2012, there will be 65,000 visas available for the H-1B category, and 20,000 visas for the Advanced Degree applicants.

When is the earliest date you can file the H-1B petition?

The USCIS accepts petitions for the upcoming fiscal year starting on April 1, 2012. On this date, petitions for H-1B status can be filed for employment cases that will be effective on October 1, 2012

How long will H-1B visas be available in 2012?

H-1B petitions will be accepted for adjudication at USCIS until the annual cap is reached.

What happens after the cap is reached?

Once the annual supply of visas is filled, there will be no H-1B visas issued until the next fiscal year [October 1, 2013].

Which are the Cap-exempt petitions?

- New H-1B petitions are exempt from the cap if the applicant will work at institutions of higher education or similar nonprofit entities, or at nonprofit research organizations or governmental research organizations.
- Petitions for current H-1B workers are also cap exempt in cases such as:
 - Extensions of stay of current H1B worker
 - Changes to petitions of employment for current H1B visa holders
 - Current H1B workers that wish to work concurrently in another second H1B position

These petitions can be approved at any time since there is no limit to the number of H1-B visas available.

What is the H-1B category?

The H-1B visa is defined as a visa that is obtained by foreign worker who is hired for employment by a U.S. business in specialty occupations that require theoretical or technical expertise in specialized fields, such as scientists, engineers, computer programmers, fashion models, accountants, as well as many other professional positions.

What are the requirements to qualify for an H1B visa?

You must have one of the following:

- 1) A Bachelor's degree or Masters Degree (or the foreign equivalent degree from your Country), OR
- 2) 12 years work experience, OR
- 3) A combination of education plus professional work experience.

The H1B visa requirements are the same for everyone from all countries.

Why is it important to file as soon as possible for the H-1B?

In November 22, 2011, USCIS received a sufficient number of petitions to reach the statutory cap for FY 2012. By this date, the USCIS had also received more than 20,000 H-1B petitions on behalf of persons under the advanced degree exemption.

Therefore, as of November 22, 2011, the USCIS rejected all petitions for new H-1B specialty occupation workers that were looking an employment date in 2012. No new H-1B petition could be approved until the new fiscal year starts on October 1, 2012.

How to Ensure USCIS Considers Your Petition Properly Filed

Petitions not subject to the cap numerical limitations will be continued to be accepted by USCIS. As stated above, these petitions include: H-1B amended petitions, H-1B extensions for individuals who have already been counted against the cap within the last six years, DOD petitions and Chile/Singapore H-1B1 petitions requesting an employment start date in FY 2012.

Not only is it important to file as early as possible. But it is essential that the petition be properly filed:

- Make sure that all sections of the Form I-129 petition are properly completed, including the H Classification Supplement to Form I-129 and the H-1B Data Collection and Filing Fee Exemption Supplement
 - Original signatures, preferably in blue ink, are required.
- All petitions must be accompanied with a check or money order for the correct fee amount.

- All required documentation and evidence must be submitted with the petition at the time of filing to ensure timely processing.

What documents are required with the Petition?

Among the documents and evidence required with the initial submission of the petition are the following:

Labor Condition Application (LCA)

A certified Department of Labor Form ETA 9035 (Labor Condition Attestation) is required at the time of filing your petition. This requires a Prevailing Wage Determination to determine what the current wage for the position is. This determination is provided by the State Employment Security Agency.

Evidence of Beneficiary's Educational Background

Evidence of the beneficiary's educational degree is mandatory. If the degree is from a foreign educational institution, an equivalency report must be included certifying the foreign credentials evaluation to US educational standards. If the qualifications are based on a combination of education and experience, there must be an evaluation from an accredited source, substantiating this evidence in relation to the professional position that has been offered by the US employer.

Evidence of the Job Offer

There must be sufficient evidence to demonstrate the authenticity of the job offer. Among the evidence to be included are: documentation concerning the operations of the US employer, the professional nature of the duties of the position, and the viability of the employer the pay the wages offered.

Procedural Issues:

Where to Mail Your H-1B Petition:

The petition must be filed at the correct USCIS Service Center depending on the jurisdiction of the H-1B beneficiary's work location.

It is indispensable that the filing instructions be read very carefully. If you file your petition incorrectly, it will be rejected.

Filing Fees:

The following fees may be required with an H-1B petition:

Current Base filing fee [as of February 2012]:

- \$325

American Competitiveness in the Workforce Fee [as of February 2012]

- \$750 for employers with 1 to 25 full-time equivalent employees, unless exempt

- \$1,500 for employers with 26 or more full-time equivalent employees, unless exempt

Fraud Prevention and Detection Fee [as of February 2012]

- \$500 to be submitted with a request for initial H-1B status or with a request for a beneficiary already in H-1B status to change employers (does not apply to Chile/Singapore H-1B1 petitions)

Premium Processing Fee [as of February 2012]

- \$1,225 if you wish to expedite the application process to 15 days or less

H1B Visa Application Process

Here is a summary of the H1-B Visa Process:

1. Offer and Acceptance between the US employer and the foreign worker concerning the exact duties of the position; the exact dates of employment; the salary to be paid for the performance of the position.

2. The 'Prevailing Wage' Determination:

The prevailing wage is determined by the State Employment Security Agency on a special form in which the US employer must specify the duties, education, skills and experience required to perform the job. The actual wage is determined by comparing other workers in the same positions with the same level of experience. The employer must pay the higher wage.

3. The petitioning company must also post notices at two conspicuous places at their business for 10 days or provide notice of the filing to the collective bargaining representative for their employees.

4. Labor Certification Application (LCA).

This is a form filed with the Department of Labor [DOL]. It contains information about the US employer, who is the H-1B petitioner. In this form, the petitioner agrees to pay the higher of the two wages, that the employment of this individual will not adversely affect the conditions of other workers and that there is no strike for their occupation at the workplace. In addition, the H-1B petitioner must attest that they will offer H1B employee the same benefits as their other workers. This includes health, life, medical, retirement, stock options and bonuses. When this is approved by the DOL, a certified copy is sent to the petitioner in order to include it with the H-1B filing.

5. H-1B Petition: The case can now be prepared with all the forms and supporting evidence to be filed in the appropriate USCIS Service office. The filing must include the I-129 forms, fees, education & experience evaluation & documents, documentation about the employee's training, professional memberships, curriculum vitae, employment contract, position description, evidence regarding the nature and scope of the business, financial documentation to show ability to pay the wages offered, and other supporting documents, as needed. Please note that all documents must be in English or include an English translation.

6. Filing of the H-1B petition and issuance of the filing receipt:

Once the case is received at the USCIS Service Center, a receipt is generated with a specific case number. This receipt will also state the approximate processing times and general information about the petitioner and foreign worker. This is the official confirmation that the case is in the adjudication process. Processing times vary depending upon the USCIS Service Center. Premium processing ensures a processing period of 15 days or less. If not, a case processed through the regular process, could take anywhere between 30-180 days. Employment cannot begin until the USCIS has approved the case and the employee has received the H-1B visa at the US Consulate abroad or has been granted change of status by the USCIS.

7. Adjudication and Petition Approval

Generally a case will be approved within the designated time-frame indicated on the USCIS receipt. During the adjudication process, the USCIS could request additional evidence and a detailed notice is sent describing what additional documentation is required and the time limit for its submission. If everything is in order, an approval notice (Form I-797) is issued to the petitioner. This I-797 shows dates of validity for the foreign worker to work in H-1B status for the petitioner.

8. The H-1B visa beneficiary can now apply for his/her visa at the US Consulate abroad. Likewise, the beneficiary's spouse and children under the age of 21 may also apply for the appropriate visa [H-4] to enter the US with the principal beneficiary. Visa processing times vary depending on the Consulate. Once the passports have the valid H-1B or H-4 (for the accompanying family members) visa stamp, the foreign employee and the family may enter the U.S. in 'H' status.

CONCLUSION:

If you are interested in working in the US on or about October 2012 and the H-1B visa is the appropriate classification, start getting everything ready

now. Based on results of previous years, the H-1B category is extremely popular and the annual cap is filled quite quickly. Your goal should be to file as early as possible to make sure your case is in the H-1B queue before the cap is reached. The earliest date you can submit the case is April 1, 2012 for an employment start date of October 1, 2012.

For additional information or consultation, please contact our office at 754-273-8283.