Let the H-1B Games Begin: May the Odds Be Ever in Your Favor

Insights
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Katniss Everdeen's bow and arrow will not help employers on April 1st, 2014 when the competition for H-1B work visas begins. On April 1, U.S. Citizenship and Immigration Services ("USCIS") begins accepting H-1B petitions for foreign workers in professional or specialty occupation jobs to fill the 65,000 available slots for applicants who hold a bachelor's degree or the equivalent and the 20,000 available slots for applicants who hold a U.S. master's degree or higher.

As the economy continues to recover and hiring increases, especially in the science, technology, engineering and math (STEM) fields, USCIS will likely receive far more than the 124,000 H-1B petitions it received in the first five business days in April of last year. As a result, USCIS will adjudicate only those H-1B petitions selected by a random computer-generated lottery. USCIS conducts the selection process for the available 20,000 advanced degree holders first. Advanced degree petitions not selected are then made part of USCIS's random selection process for the 65,000 limit. If USCIS approves the petition, the foreign worker may start working in H-1B status on October 1.

Once USCIS reaches its quota, which will likely happen in the first five business days, USCIS will not accept H-1B petitions again until April 1, 2015. Employers anticipating the need to hire foreign workers in H-1B status over the next two years should make that decision now and file H-1B petitions with USCIS on April

Some important things for employers to keep in mind when making the decision to sponsor a foreign worker for H-1B status:

- Start the process immediately – it generally takes 10 days to get the petition package ready for submission to USCIS.
- Generally, the H-1B job must be one that requires at least a bachelor's degree in a specific field for entry and the foreign worker must have the required degree or the equivalent.
- Check the USDOL's prevailing wage for the position based on the minimum requirements and the location of employment and be ready to pay the higher of the prevailing wage or the actual wage for the position.
- Employers are required to post a notice for ten business days in a conspicuous place at the job site listing the offered wage and their intention to hire a H-1B worker.

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- Employers are required to maintain a Public Access File, to be produced upon request to the USDOL or any interested person, containing information including how you determined the offered wage and what benefits will be offered to the H-1B worker.
- If the foreign worker earned his or her degree outside the U.S., employers need to obtain a credentials evaluation stating that the foreign degree is the equivalent of one awarded by an accredited U.S. institution.
- USCIS conducts random site visits of H-1B employers to verify the information in the petition, including the job duties, job location and salary.
- If the H-1B employment relationship ends before the approval period, you must notify the USCIS and the USDOL of this event and offer the H-1B employee the reasonable transportation costs to return to his or her home country.
- Educational institutions, nonprofit or governmental research organizations are exempt from the H-1B cap;
- Employers filing extensions for their current H-1B employees, changes of employer for candidates already in H-1B status, or petitions for candidates who were counted against the cap in the last six years are also not subject to the H-1B cap.
- USCIS approves H-1B petitions in a maximum of three year increments and generally, the H-1B employee is allowed a total of six years in H-1B status, which can be extended if the employer sponsors the foreign worker for permanent residence status and files the initial application with the USDOL before the end of the fifth year of H-1B status.

A H-1B worker may be the perfect fit for your business. If so, start the petition process now. Missing the application window could mean a long wait for the right employee. Unlike the Hunger Games, this is one competition where every applicant yearns to have his or her name selected.

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