



Deadline for New H-1B Visa Applications Approaching

Insights

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On April 1, 2009, U.S. Citizenship and Immigration Services (USCIS) will begin accepting new H-1B visa applications for employment starting on and after October 1, 2009.

The H-1B visa is a popular choice for companies looking to hire a foreign worker to fill a "professional" or "specialty occupation" position. The H-1B visa allows for 6 years of employment in the U.S., which is extendable if the company sponsors the individual for permanent residence.

Applications for the visa can only be made once each year, so it's important that you begin evaluating your company's need for new H-1B workers now. This annual deadline only applies to new H-1B visas, not to individuals who already hold H-1B status. Possible candidates for an H-1B visa include potential new hires or current employees working on another type of work visa, such as student (F-1/OPT), exchange visitor (J-1), intra-company transferee (L-1), or NAFTA professional (TN).

What Type Of Job Qualifies For An H-1B?

Any position that requires at least a bachelor's degree as a minimum qualification may qualify for an H-1B visa. In other words, if in the general labor market a candidate would usually need a bachelor's degree to be hired for a given position, that position may be filled by an H-1B authorized worker.

The H-1B worker's degree must be in a field related to the position being filled. If the H-1B worker does not have a formal educational degree, then 12 years of progressive experience in the field may be used instead to obtain an equivalency determination.

When Should I Start Gathering The Necessary Paperwork?

Now is the appropriate time to begin gathering information about the proposed employment, preparing the necessary forms and supporting documentation, and obtaining information about the intended H-1B visa recipient. The Department of Labor has instituted a new regulation that will add an extra week to the time necessary to prepare the H-1B application. The Labor Condition Application, which is required to be approved by the Department of Labor before the H-1B application can be filed with USCIS, will now be reviewed manually rather than being instantly approved online. This new process means that petitions must be in process **no later than mid-March** in order to meet the filing deadline.

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The law allows for 65,000 new H-1B visas to be issued each year, and an additional 20,000 visas are available to foreign workers with an advanced degree from a U.S. academic institution. Because the visas are "capped" at a certain number each year, employers are forced to take advantage of the April 1 filing deadline or wait until the following year to re-apply.

Certain employers are exempt from this cap, and can apply for an H-1B visa year-round. These include institutions of higher education such as universities; non-profit entities related to an institution of higher education; and non-profit or government-affiliated research organizations.

For more information about the H-1B visa or for advice about hiring a foreign national generally, please contact the Global Immigration Practice Group at (404) 240-4224.