



USCIS Will Start Accepting H-1B Petitions on April 1

Insights

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On Monday, April 1, 2013 U.S. Citizenship and Immigration Services (USCIS) will begin accepting FY 2014 H-1B cap-subject petitions for employment starting on October 1, 2013.

What is the H-1B Cap?

There is an annual cap on the number of new H-1B petitions available each year. 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 there is a cap on the number of available visas each year, employers interested in hiring foreign workers in an H-1B status should take advantage of the April 1 filing opportunity.

Certain employers are exempt from the H-1B 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. In addition, foreign workers who have already been counted against the H-1B cap are not subject to the H-1B cap.

What Type Of Positions And Workers Qualify For An H-1B?

U.S. businesses use the H-1B visa to employ foreign workers in “professional” or “specialty occupation” positions. A position is considered “professional” or a “specialty occupation” if it requires at least a bachelor’s degree as a minimum qualification for the position. 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 worker. Similarly, the H-1B worker must possess a degree 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 the equivalent of a bachelor’s degree.

How To Prepare

Although the FY 2013 H-1B cap was not reached until June 11, 2012, the cap may be reached quicker this year. Therefore, you should immediately evaluate your hiring needs for this year and identify any current employees or potential hires who will need H-1B sponsorship.

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). Once you have identified candidates for H-1B status, you should contact an immigration attorney to evaluate whether the offered position and the candidate's credentials will support an H-1B petition and start preparing to file the H-1B case on April 1, 2013.

For more information contact any attorney in the Fisher Phillips Global Immigration Practice.

This Legal Alert provides an overview of a specific immigration regulation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.