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*Immigration Attorneys*

## Immigration Update April 11, 2014

### H-1B Work Visa

The H-1B filing season begins on April 1, 2014. Prior to filing an H-1B with the USCIS, however, there are certain preliminary requirements with the Department of Labor (DOL). In 2013, the number of cap-subject H-1B petitions filed during the first week of April far exceeded the number of H-1Bs available. Many companies were unable to hire all of the foreign-born workers they desired because the petitions had to be selected according to a "lottery" system. We anticipate a "lottery" for the H-1B visas again this year.

How should employers prepare to ensure that they have the best chance at getting their H-1B petition approved?

#### CURRENT NUMBER OF H-1B VISAS AVAILABLE PER YEAR

1) There is a limit of 65,000 Bachelor's degree and 20,000 US Master's degree H-1B petitions which can be approved per year. Employers are more likely to have their petitions approved for Master's degree candidates, even if the position being offered only requires a Bachelor's degree or its equivalent. If your candidate has a Master's degree, investigate whether or not the petition can be filed under that category.

#### CAP-EXEMPTIONS

2) Some employers are "cap-exempt" and do not have to worry about the H-1B limit of 85,000. These employers include: (a) institutions of higher education; (b) non-profit entities which are "related to" or "affiliated with" an institution of higher education; (c) non-profit research organizations; and (d) government research organizations. Such employers can sponsor H-1B employees year-round and pay less in filing fees.

3) If your employee is currently working in H-1B status for another cap-subject employer, he/she is exempt from the cap and can start working for you as soon as you file an H-1B petition on his/her behalf. You do not need to wait for an approval of the H-1B for the employee to start working.

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- 5) If your employee is a citizen of Singapore or Chile, he/she does not fall under the 85,000 quota and you have a greater chance of getting an approval.

#### **FIRST THINGS FIRST: DEPARTMENT OF LABOR MUST APPROVE LCA**

- 6) An H-1B petition can only be submitted to the USCIS after the U.S. Department of Labor (DOL) approves a Labor Condition Application (LCA). The processing time for an LCA approval can take two months or more. Therefore, in order to increase your chances of getting the H-1B in the lottery, it may be wise to file your LCAs in January or February even though this may shave off a few months from the usual 3-year H-1B initial validity period.

#### **OTHER VISA OPTIONS**

- 7) If your employee is a citizen of Canada or Mexico, he/she may be entitled to a NAFTA (TN) visa rather than an H-1B visa, which is quicker and less costly. If your employee is a citizen of Australia, he/she may qualify for an E-3 visa which is similar to an H-1B visa but does not require all the same steps and does not fall under the quota.

- 8) If your employee is a physician who has obtained a J waiver, he/she is not subject to the H-1B cap of 85,000.

- 9) Not all candidates who have a Bachelor's or Master's degree are eligible for an H-1B visa. Many business degree holders do not qualify for an H-1B visa because the USCIS generally does not consider a business degree as a specialty occupation. Therefore, such individuals should investigate whether they qualify for another type of visa, such as an E-2 visa to set up his/her own business.

If you are an employer or employee and have additional questions about H-1B visas or other employment-based immigration questions, please contact our office at (361) 883-8800 or [rminfo@debrarodriguez.com](mailto:rminfo@debrarodriguez.com) or visit us at [www.debrarodriguez.com](http://www.debrarodriguez.com)