

Related Services

Immigration

It is H-1B Filing Season—Do Not Miss the Opener on April 1, 2017

Legal Update

01.05.2017

By Loan T. Huynh, Robert D. Aronson, Laura J. Danielson & Debra A. Schneider

USCIS will start accepting H-1B petitions for fiscal year 2018 (October 1, 2017-September 30, 2018) on April 1, 2017. Only 65,000 H-1B's are issued each fiscal year, with an additional 20,000 H-1B's for graduates of U.S. master's degree programs.) As in recent years, we expect the H-1B cap to be reached within a week. Last April, USCIS received approximately 236,000 H-1B petitions in the first week. There will likely be a lottery for those applications received within seven days of April 1, 2017, once USCIS receives more than 65,000 applications. The lottery is a random selection process of the H-1B applications received to determine which applications will be assigned an H-1B cap number and adjudicated.

Employers who have foreign national employees/candidates who need H-1B sponsorship should start the process soon in order to ensure that their applications are filed and received on April 1, 2017. The H-1B is available to employers seeking to hire a foreign national worker with at least a bachelor's degree or equivalent in a relevant field for a position that requires a degree in that field (also known as a specialty occupation). The H-1B cap applies to new H-1B petitions filed for foreign workers who have not had an H-1B petition filed and approved within the past six years.

Identifying Candidates Who Needs H-1B Sponsorship

To avoid missing out on filing an H-1B petition under the fiscal year 2018, employers should identify candidates who need sponsorship and are in professional positions. Some of the candidates may already be currently employed and are working under temporary work authorization. Below are examples of cases where an employee or job candidate may need H-1B sponsorship:

- Students who are working under Optional Practical Training (OPT) or Curricular Practical Training (CPT) and will need H-1B sponsorship to be eligible to be employed in the U.S. once their OPT or CPT expires;
- Candidates currently in H-1B status with an H-1B cap exempt employer (institutions of higher education or a related or affiliated non-profit entity, nonprofit research organizations, or governmental research organizations) and are seeking

It is H-1B Filing Season—Do Not Miss the Opener on April 1, 2017



employment opportunities with cap subject employers; and

- Candidates who are in other nonimmigrant work status such as TN, H-3, H-2, O-1 and J-1 but need to change their status to H-1B.

Employers must also be careful to avoid allegations of discrimination on account of citizenship or national origin, so the questions they ask to elicit relevant information are critical. There have been many rumors regarding possible changes to the H-1B program under President Trump's administration. For any regulatory changes in the H-1B program, there will need to be action from both the Senate and House, with rulemaking notice. We will keep you updated as to any changes in the H-1B program or any other immigration changes. In the meantime, preparation for the H-1B season should continue under the current rules.

For additional information, please contact the Immigration Team at Fredrikson & Byron P.A., 612.492.7648.