

H-1B Visas Still Available

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There is a growing apprehension over the availability of H-1B visas as the current fiscal year comes to an end. As a rule, if a person applies for change of status and the H-1B cap has been reached, they will be treated as out of status before the beginning of the next fiscal year.

But US employers and qualified foreign nationals need not fret as there are still H-1B visas available, if their petitions are filed soon enough.

H-1B is a visa for nonimmigrant workers created more than fifty years ago and the annual cap of 65,000 H-1Bs was established under the Immigration Act of 1990. US employers are allowed under this law to hire highly skilled foreign workers temporarily in occupations with a minimum requirement of a bachelor's degree.

Generally, the H-1B may be approved for an initial period of up to three years, renewable for a maximum of total period of six years. Examples of H-1B occupations are accountants, teachers, engineers, architects, management analysts or computer programmers.

Every fiscal year beginning October, 65,000 H-1B visas are made available. When President George W. Bush signed the Omnibus Appropriations Act on December 8, 2004, the law included the H-1B and L-1 Visa Reform Act of 2004, which took effect on March 8, 2005.

ANNUAL CAP

One of the principal changes brought about by the said law is the increase in the annual cap for H-1B by 20,000. Under this provision, foreign nationals with a Master's or higher degree from a US institution will be exempt from the 65,000 annual cap. Instead, they will be counted against the 20,000 H-1B visas made available under the new law. When the 20,000 visas are exhausted, subsequent approvals for advanced degree foreign nationals will be counted against the 65,000 annual cap as

with the rest of those with bachelor's degrees.

From the 65,000 annual cap, 6,800 are actually allotted for the H-1B program under the US-Chile and US-Singapore Free Trade Agreements, effectively reducing the cap to 58,200. The annual cap does not apply to renewals of the H-1B status.

As of July 31, there are still about 9,160 H-1B visas available for Fiscal Year (FY) 2006, after taking into account 21,252 H-1B approvals and 27,788 pending petitions.

ADVANCED DEGREE H-1Bs

As for advanced degree exemptions, there are a total of 10,150 approved and pending cases as of July 28, which were counted against the 20,000 allotment for FY 2005.

The USCIS reopened the filing period for H-1B advanced degree exemptions for FY 2005 on May 12. These petitions for FY 2005 must be filed only with the USCIS Vermont Service Center at 1A Lemnah Drive, St. Albans, VT 05479-7001, otherwise, they will be rejected.

On April 1, the USCIS started receiving H-1B petitions for FY 2006. It exempted the first 20,000 advanced degree H-1Bs against the 65,000 annual cap. The 20,000 slots have not been exhausted yet. As of July 31, there were a total of 7,884 approved and pending advanced degree H-1B petitions.

FILING FEES

The H-1B and L-1 Visa Reform Act of 2004 increases the filing fees for H-1B petitions. Aside from the basic filing fee of \$185.00, it re-imposed the "training" fee under the American Competitiveness and Workforce Improvement Act of 1998, and further

requires a \$500 fraud prevention fee. While certain entities may be exempted from the "training" fee, there are no exemptions from the fraud prevention fee.

The "training" fee per H-1B petition is either \$1,500 for employers (including its affiliate or subsidiary) with 26 or more full-time employees or \$750 for those with 25 or lesser full-time employees. This fee is supposed to fund job training and grants for math, engineering or science courses for low-income US workers.

Those who wish to fast-track their H-1B petitions may opt for premium processing for an additional fee of \$1,000. The USCIS guarantees the expedited processing within 15 days from receipt of the petition. The petitioner will either receive an Approval Notice, a Request for Further Evidence, a Notice of Intent to Deny or a Notice to Investigate Fraud or Misrepresentation.

OTHER CHANGES

The new law requires the employers to pay 100 percent of the prevailing wage and mandates the Department of Labor (DOL) to establish a four-level prevailing wage, thereby giving the US employer flexibility and encouraging compliance with the prevailing wage requirement.

The DOL may now also initiate an investigation of non-compliance with the labor condition application filed by the employer. Previously, the DOL may investigate LCA violations only upon the complaint of an aggrieved person.