

North Carolina Law Life

Are You a Foreign Student about to Graduate or Finishing a Year in OPT?

By: Oliver Branch. *This was posted Friday, February 19th, 2010*

If the answer is “yes,” it is time to start thinking about obtaining an [H-1B nonimmigrant visa \(“H-1B visa”\)](#) so that you may stay and work in the United States.

What is an H-1B Visa?

Much like when in [OPT \(Optional Practical Training\)](#), an H-1B visa allows you to be employed by the company sponsoring the visa for up to six years (sometimes longer) in what [United States Citizenship and Immigration Services \(“USCIS”\)](#) calls “specialty occupations.” The regulations define a “specialty occupation” as requiring theoretical and practical application of a body of highly specialized knowledge in a field of human endeavor, and requiring the attainment of a bachelor’s degree or its equivalent as a minimum. Although the possibilities are endless, examples of common H-1B eligible positions are accountants, computer programmers, database administrators, general managers, marketing research analysts, medical technologists, software engineers, and teachers.

Is an H-1B Visa Only Used for Full-Time Employment?

No! The H-1B visa can be utilized for both full-time and part-time employment. Although there are wage issues to be considered, “part-time H-1B visas” may be a life saver for both employers under financial restraints and potential employees who are scared the troubled economy will keep them from finding an employer to sponsor their visa. It is also possible to have two companies sponsor an individual for two separate part-time H-1B visas.

When Should You File for Your H-1B Visa?

To be on the safe side, April 1st! Each year, employers begin filing H-1B visas on April 1st of each year for employees who will begin their employment with the company on October 1 of the same year (beginning of the new federal fiscal year). Currently, U.S. law limits the number of H-1B visas to 65,000 per fiscal year (with some exceptions). This limit is called the “H-1B Cap.” Over the past few years (apart from last year) the H-1B Cap was met by petitions filed on the first possible day of filing (April 1). Last year, due to the poor economy

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and restrictions on employers who received TARP funding, the H-1B Cap was not met until after the beginning of the federal fiscal year. This year is anyone's guess.

For more information on H-1B visas or any other business, employment, or immigration issues, please contact [our offices](#).

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