

THE H-1B SEASON IS UPON US AGAIN.

The 2013 H-1B Season is Upon Us . . . Will This Year's Economy Bring a Lottery? At this juncture, it does not seem likely. However, as the statistics from last year show, planning in advance of April 1st for the H-1B is the key to being able to continue your authorized work status in the U.S. It is likely that it need not be said but . . . it is always best to seek competent immigration legal counsel to be able to find a way to legally remain in authorized work status in the U.S.

Yes, it is that time of year again! We always hear the Accountants moan and groan about the approaching April 15th deadline each year, but you have to listen a bit more closely and you will hear (and see) the U.S. Business Immigration Lawyers and Attorneys manifesting their continuing distaste for the April 1st filing date for cap-subject H-1B professional and specialty occupation workers.

Well, here we go again . . .

April 1st, 2013 marks the first day when prospective H-1B petitioning employers and prospective H-1B employees will be able to apply to the U.S. Department of Labor (DOL) for Labor Condition Applications (LCA) and H-1B visa petitions to the U.S. Citizenship and Immigration Services (CIS) for employment in the fiscal 2013-2014 year (FY 2013). Our advice to our H-1B employer clients continues to be that they need to think about filing H-1B petitions on (or very close to the) April 1st deadline for new and existing employees (usually international students in Optional Practical Training [OPT]) who will be eligible for first-time H-1B visas to begin their employment on or after October 1st, 2013.

By way of background, each Fiscal Year (FY), Congress mandated an annual cap of 65,000 H-1B visas for "professional and specialty occupation workers" who possess the equivalence of a U.S. Bachelor's Degree. There are also an additional 20,000 H-1B visas available for individuals who possess the U.S. Master's Degree or other advanced degrees from U.S. Colleges or Universities.

Some cases are NOT subject to the cap. For example, Institutions of Higher Education and Government Research Organizations are H-1B Cap exempt organizations. It continues to be the case that H-1B visa petitions filed on behalf of current workers who have been counted previously against the H-1B visa cap are also not included in the annual cap. Additionally, pursuant to the Chile and Singapore Free Trade Agreement, 6,800 H-1B visas are available exclusively to Chile and Singapore Nationals. The Singapore/Chile numbers reduce the total allotment of H-1B visas available each fiscal year to 58,200.

Our offices continue to assist international students who are trying to obtain the H-1B nonimmigrant visa. We also assist employers with E-Verify applications, so that

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they can offer international students, who are working for them in Optional Practical Training (OPT), a 17-month STEM extension.

In 2008, there was a regulation that gave some assistance to international students in the U.S. who applied for H-1B during their OPT. At that time, a regulation was promulgated that provided "cap-gap" relief for F-1 students with approved H-1B petitions if the H-1B was filed while the student was still in a period of approved work authorization. In other words, F-1 student visa holders who received work authorization in OPT were permitted to extend the authorized work authorization and period of stay until October 1st as long as they have received an approved H-1B visa prior to the expiration of their OPT.

Also, many Science, Technology, Engineering, and Mathematics (STEM) students continue to use the STEM extension as a way to get two (2) bites at the apple and to obtain the additional time they need to petition in a subsequent H-1B cycle. To get the STEM extensions, an employer needs to be enrolled in E-Verify. Now E-Verify allows the public to view which are and which are not E-Verify employers.

For several fiscal years, the H-1B allotment actually lasted for almost eight to nine months. This past year, the H-1B allocation went faster. However, in some years past, the H-1B allotment was actually exhausted within three (3) days of the H-1B visas becoming available on April 1st. This required the CIS to conduct a "lottery". Those were scary times for individuals and companies seeking H-1Bs.

It is likely that the demand for H-1B visas this fiscal year may be greater than it was for last year. We keep hearing that "economic recovery" continues in 2013. For this reason, we continue to advise our H-1B employers to consider filing on April 1st, 2013, or as close to April 1st, as possible.

For any additional information about the 2013 "H-1B Season" or about speaking to employers about how to prepare and file an H-1B visa, please feel free to contact our offices at info@visaserve.com.

The Nachman Phulwani Zimovcak (NPZ) Law Group P.C. is ready to assist you and your staff with your potential H-1B nonimmigrant professional and specialty occupation worker visa petition(s) before the USCIS (legacy INS) and with Consular Processing of H-1B visa cases anywhere in the world.

We can also assist you or your family members with any and all of your immigration law needs in the U.S., Canada and with regard to outbound transfers to select foreign countries.

If you should have any questions, please feel free to contact our offices at 201-670-0006 (x100) for David Nachman, Esq., (x124) for Michael Phulwani, Esq., and (x105) for Ludka Zimovcak, Esq.

We also have Canadian Lawyers on our staff to assist you with transfers to Canada and we have an affiliated office in Mumbai, India, and an office on 36th Street and 5th Avenue in New York City a corresponding office in the Netherland Antilles.