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### **Get an Edge with the H-1b Employment Visa**

The demand for H-1b visas in the United States is so great that just last year the USCIS received more applications than it had visas to offer by noon the first day it accepted them! Proof of the steady demand increase for H-1b visas is seen in the fact that in 2006 the visa quota was not reached until 4 months after the day USCIS starting accepting applications. In just two years, the demand has sky-rocketed. This past year the USCIS was forced to have to use a lottery system just to choose the applications it would even process. Each year the US government allots 66,000 H-1b visa. Last year, the USCIS received over 66,000 applications by **noon** the very first day it began to accept them It's clear U.S. companies are taking advantage of this system to stay as competitive as possible. The need to use this sort of lottery system has never occurred in the history of Immigration in the US.

The H-1b visa is so popular because employers and professionals understand the enormous benefits it offers. The H-1b visa not only gives benefits to U.S. companies but it is also extremely attractive to foreign professionals. The H-1b is a visa specifically available to U.S. companies looking to hire foreign professionals who are either inside of the United States or living abroad. To qualify, the candidate must have a Bachelors degree from the U.S. or abroad or the specific amount of experience required to equal the education. By using H-1b visas, U.S. companies are able to amplify their pool of candidates and not be restricted in their recruitment efforts by geographical location. U.S. companies can now hire qualified candidates regardless of where they are located. Companies can offer the H-1b visa as a benefit to the foreign professional that will allow them legal employment in the U.S. and permission to bring in their spouses and minor children. This has a huge impact on the potential growth and efficiency of the U.S. company in the current global market.

Many companies who don't currently take advantage of the H-1b visa don't realize the benefits it provides to the foreign professional. One of the main reasons that the H-1b visa is so attractive is because it pre-qualifies him or her for a Green Card. The company benefits from this as well because the company can then hire and keep the employee for

longer than the six years maximum permitted through the visa. After the employee obtains a Green Card, there is no limit of time he or she can work for the company. This comes in very handy for companies that expend resources and training on these employees.

Though the H-1b limits the time the worker can remain in the U.S., a U.S. company can actually keep the employee indefinitely. To be able to do this, there are several things the company must first do.

The U.S. company must file a Labor Certification with the Department of Labor on the employee's behalf. This step requires seeking the prevailing wage, job posting, and recruitment. After this step is completed, the U.S. employer must then file an I-140 Petition for Alien Worker along with all the necessary documentation. The Petition for Alien Worker is a pre-requisite to making the employee eligible to apply for a Green Card. After this step is completed, many people make the mistake of thinking they can then immediately apply for their Green Card. This is an extremely common and costly mistake.

U.S. companies and foreign professionals are often not aware that the professional cannot apply for a Green Card until his or her priority date is current. The timeliness of the priority date refers to the USCIS processing times and backlogs. In essence, the waiting period can range from a few months to a few years based on the employee's credentials. For example, if the foreign professional has a Masters Degree or higher, he or she can apply for a Green Card the same year that the Labor Certification is approved. In other cases, the person will have to wait several years.

Also, something that professionals are commonly unaware of is that they **must** maintain a valid visa the whole time they are waiting to apply for the Green Card.

Another fact that is not commonly known is that U.S. companies can't employ foreign professionals currently in the U.S. with an H-1b visa without first obtaining a separate H-1b visa on their behalf. The process of applying for the separate H-1b visa must be done by the company looking to hire the H-1b visa holder. If the candidate works for the second company without an approved H-1b visa, both the company and the professional are in violation of the law. In fact, this situation places the U.S. company at risk of being sanctioned for violating employment and Immigration laws and fatally damages the foreigner's immigration case. Beginning to work for another company aside from the original sponsor on the H-1b visa, makes the employee fall out of status and subject to deportation. Most importantly, he or she is immediately disqualified from a Green Card. Thousands of people are ignorant to this fact and come to find out when it's too late. They find out during the Green Card application process after they have wasted lots of years and money.

However, a U.S. company can avoid this issue by petitioning the foreign professional immediately. The H-1b visa from the new company does not have to be filed by April 1<sup>st</sup>. It may be filed at any time because it is not subject to the 66,000 yearly quota. As a

result, these types of cases are not subject to the same amount of competition as original H-1b visa petitions because there is not limit to the visas available.

If you are a U.S. company looking to hire foreign professionals, you should take advantage of the H-1b visa. As long as the candidate has a Bachelors degree from the U.S. or abroad or the necessary years of experience, a U.S. company may petition him or her as an alien worker. Geographical location does not matter. However, the most important thing to be aware of is the annual cap and deadline for this visa. There are only **66,000** H-1b visas available per year. This year, the first day the USCIS will begin to accept H-1b visa applications is April 1, 2008. Last year, the USCIS received more than 66,000 H-1b visa applications by **noon** the very first day it began accepting them. Thousands of people were denied because they were not fortunate enough to submit their H-1b visa application on time. It is clear that hundreds of U.S. companies have wised up to the concept of hiring foreign talent to be as competitive as possible. Knowing this, if you've got candidates you want to hire, seek legal representation from an Immigration lawyer as soon as possible to complete your petition by April 1<sup>st</sup>! It's an investment that will pay large dividends over time.

#### **About the Author:**

Attorney Sonia M. Muñoz is a tri-lingual immigration attorney, who publishes weekly press releases and articles in both the English and Spanish media all across the country. She has appeared on both radio and television as an immigration expert. Aside from working as a Political Analyst for the CIA, Ms. Munoz has worked for the International Court of The Hague, co-authored a bench book for the U.S. Supreme Court, conducted and participated in conferences with State Senators and Representatives, and interviewed former President Bill Clinton. She is now the President of Immigration Legal Counsel, LLC. (ILC), a South Florida-based law firm, handling Business Immigration cases in all 50 states and Internationally. You can find more information about ILC and different methods of entry into the US on their website at [www.ilclawfirm.com](http://www.ilclawfirm.com), or by calling 1-866-482-VISA(8472). Initial Consultation is FREE.

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