

Article: March Madness – Are you on the H-1B Bubble? Szabo, Zelnick & Erickson, P.C.

It's that time of year again, when all of the immigration world is a buzz with the H-1B cap filing date on the horizon. On April 1, 2009, the United States Citizenship and Immigration Services (USCIS) will begin accepting H-1B petitions filed for fiscal year (FY) 2010. As a reminder, FY 2010 commences October 1, 2009 and the USCIS permits H-1B petitions to be filed 6 months in advance of the FY start date. For FY 2010, the USCIS will issue 65,000 H-1Bs, minus the 6,800 set aside for the U.S. Chile and U.S. Singapore Trade Agreements, for a total of 58,200 H-1Bs. The USCIS will also issue an additional 20,000 H-1Bs to foreign nationals holding an advanced degree from a U.S. university.

For FY 2009 the H-1B cap was met within days of the April 1st filing date. As such, the petitions received during the first five days were placed into a lottery and randomly chosen for processing. The H-1B cap is again expected to be exhausted during the first few days of filing. As with last year, the USCIS will accept petitions filed during the first five days and then conduct a lottery. Last year, petitioners were notified whether their petitions were accepted in the lottery around the middle of April.

Since the H-1Bs will most likely be exhausted within the first five days of the April 1 filing date, a company should identify H-1B candidates in advance so that petitions may be filed on their behalf as close to April 1 as possible. Potential candidates could include new employees or employees now working in F-1, J-1, L-1 and TN status who would then be eligible to change to H-1B status when FY 2010 commences on October 1.

Following the USCIS' guidelines is of great importance when submitting an H-1B petition. Below are a few of the "Helpful Hints" that the USCIS provided last year to assist petitioners with correctly submitting petitions the first time. New "Helpful Hints" have not yet been issued by the USCIS this year, but should they be published we will provide an update.

1. Clearly label all H-1B cap cases in red ink on the top margin of Form I-129 petition. Use the following codes:
 - Reg. Cap (65,000 regular cap cases minus the C/S cap cases received);
 - C/S Cap (Chile/Singapore H-1B1s);
 - U.S. Masters (20,000 cap exemption for beneficiaries with U.S. Masters or higher degrees);
 - Exempt (for petitions filed by certain institutions of higher education; nonprofit organizations; and nonprofit research organizations or governmental research organizations, as defined in USCIS regulations).
2. Fill out Form I-129 and supplements correctly, consistently and completely:
 - Form I-129 petition;
 - H classification supplement;

- H-1B Data Collection and Filing Fee Exemption Supplement;
- Request for Premium Processing, if applicable.

Original signatures are required. Tip: blue ink makes it easy for us to confirm an original.

3. Employer must submit the correct fees as follows:

- Base filing fee - \$320;
- American Competitiveness and Workforce Improvement Act of 1998 - \$750 for employers with 1 to 25 full time employees or \$1,500 for employers with 26 or more full time employees;
- Fraud fee - \$500 To be submitted with the initial H-1B petition filed on behalf of each beneficiary by a petitioner; and,
- Premium Processing fee - \$1,000.

4. Please send only one petition per envelope.

Being selected for an H-1B visa has turned into a once a year phenomenon, where thousands of petitions are submitted to the USCIS in a matter of days. Incorrectly completed petitions may result in a rejection or denial of the petition. Since a petitioner has one shot each year, it is imperative that each petition be prepared, packaged and filed properly. If you have any questions regarding the H-1B process or H-1B requirements, please contact our office for further details (info@szelaw.com).

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