DAVID NACHMAN'S TOP TEN REASONS WHY WILLING PROSPECTIVE H-!B EMPLOYERS SHOULD DO H-1B VISAS FOR WILLING H-1B CANDIDATES.

By David H. Nachman, Esq., Managing Attorney, Nachman Phulwani Zimovcak (NPZ) Law Group, P.C. with offices in NJ, NY and with affiliated offices in Canada and India.

Every year at about this time, U.S. Employers approach the Immigration and Nationality Lawyers and Immigration Attorneys at the NPZ Law Group often asking us for the reasons why they should consider doing the H-1B visa. Here are the TOP TEN REASONS we give to them. David Letterman, eat your heart out . . .

10. By doing an H-1B visa sooner, rather than, later, the prospective H-1B employer and employee allow themselves time in the event that the H-1B is not approved in the current H-1B cycle. Some employers delay the process and have prospective H-1B employees remain in OPT status. While, in some cases, this may be good for tax purposes, it decreases the chance of getting an H-1B because the prospective H-1B employer and employee miss-out on a "second bite at the apple" by not being able to make a second (and sometime third) H-1B cycle petition.

9. H-1B Employers and H-1B Employees do NOT displace U.S. workers. The LCA Form 9035 requires that the H-1B employer represent that the federally mandated prevailing wages are being paid to the prospective H-1B employee so as NOT to displace any U.S. workers. The U.S. employer is also required to make other attestations in connection with the LCA to protect the wages and working conditions of U.S. employees.

8. The H-1B process is only a "temporary (nonimmigrant) work visa" and it does NOT require the prospective H-1B employer and the prospective H-1B employee from proving that there are "no able, willing and qualified" workers who can take the job. Many employers who do NOT understand the H-1B process misunderstand the LCA and the H-1B petition process and mix-it-up with the PERM Labor Certification process.

7. By sponsoring an H-1B nonimmigrant, employers can save additional fees that they would ordinarily might have to pay to recruiters and/or for additional training if the individual, who may be working for them, is presently working in OPT and is not sponsored for the H-1B. Also, "recruitment fees" can be avoided since it may be easier for the prospective H-1B employer and employee to find a candidate "directly" who requires an H-1B.

6. H-1B visa petitions are filed on April 1st (during H-1B season) for an October 1st start date. This enables H-1B employers who have received approvals of the H-1B, to appropriately plan projects and to coordinate efforts of other staff members and work groups. Also, the H-1B is a "dual intent" visa and allows flexibility so that the U.S. employer can apply for the green card for the H-1B nonimmigrant so that there is no prejudice to him/her with regard to a conflict in the underlying intent required.

5. The H-1B visa petition is relatively routine to prepare for the skilled immigration lawyer or immigration attorney. The process is easy to explain to both the H-1B employer and the H-1B employee. While there are many nuances in the H-1B process, the H-1B petition process can be completed in a matter of days assuming, that there are no delays in the return from the DOL of the LCA that is filed through an electronic process called iCert.

4. H-1B visas can be done on a "part-time" basis and need not necessarily be done on a full-time basis. Many prospective H-1B employers are under the mistaken impression that the H-1B nonimmigrant visa MUST be for a full-time position with the prospective H-1B employer. In fact, part-time H-1Bs are quite common. In addition to "part-time" H-1B visas, a prospective H-1B employee can arrange to have "concurrent" H-1B visas and can work for several H-1B employers at the same time. Concurrent H-1Bs are frequently used by IT professionals and specialty engineers who have very specific skillsets that are valuable to many U.S. organizations simultaneously.

3. If the H-1B visa petition is not accepted under the "cap" (in a scenario where more H-1B visas are submitted for the 65,000 Bachelors equivalency and 20,000 U.S. Master's H-1B slots) the case will be returned to the prospective H-1B employer and the H-1B government filing fees will be refunded. If the case is retuned to the prospective H-1B employer, then the prospective H-1B employee and the employer will have an opportunity to confer with their legal counsel (their immigration lawyer) to determine what H-1B alternatives may be available. For example, Canadians may be eligible to apply for TN classification and Australians may be eligible for E-3 visas. Additional H-1B visa alternatives are also available.

2. The payment by the U.S. employer of the DOL Training Fee of $1,500.00 (for U.S. employers with more then 25 employees) and $750.00 (for U.S. employers with less then 25 employees) makes a contribution to a special fund that is a Grant Fund administered by the U.S. Department of Labor. The Grant is for the education of U.S. workers to learn Hi-tech skills that are now being rendered by H-1B workers in the U.S.

1. Bringing H-1B Professionals to the U.S. allows the U.S. to be globally competitive and to bring highly-skilled professional and specialty talent to the U.S. that would or might go to another country. The H-1B process was created to allow the U.S. to retain valuable talent that is trained at U.S. academic institutions and who we allow to work for one full-year with U.S. employers in Optional Practical Training (OPT) (often for more time if they can get a STEM OPT). What a waste not to retain this talent?!?