

ABCs OF H-1Bs (THIS IS PART V OF AN VIII PART SERIES): DOES MY MASTER'S DEGREE QUALIFY ME FOR THE H-1B MASTER'S CAP?

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Many F-1 visa holders, particularly those who are engaged in OPT change their immigration status to become professional and specialty workers (H-1B workers). The H-1B cap is the Congressionally-mandated limit on the number of individuals who may be granted H-1B status during each fiscal year. Most foreign nationals seeking H-1B nonimmigrant classification are subject to the 58,200 cap. There are an additional 20,000 H-1B visas, which are limited to individuals who receive a master's degrees (or higher degree) from a United States College or University.

Immigration practitioners, F-1 students, and prospective H-1B employers should note that *not* every master's degree from a United States College or University qualifies a foreign national for the additional 20,000 H-1B visas under the H-1B "master's cap". In order for an individual to qualify for the master's cap, a few criteria need to be met. First, the degree must qualify as a master's degree. Additionally, the master's degree must be issued by a "U.S. institution of higher education" as defined by section 101(a) of the Higher Education Act of 1965.

To determine whether a U.S. issued degree is a master's degree (for "master's cap" purposes), USCIS adjudicators consider more than the simple nomenclature of a degree. The fact that the degree itself is or is not titled as a master's degree is, by itself, not dispositive. For instance, in the field of Chiropractics, the entry-level degree is "Doctor of Chiropractic", and a bachelor's degree in any field is not required prior to obtaining that degree. On the other hand, attorneys typically hold a "Juris Doctorate" degree (J.D.) and medical doctors hold a similar "Doctor of Medicine" degree (M.D.). Prior to earning either a J.D. or M.D. degree, the holder must first earn at least a bachelor's degree in some particular academic field. Accordingly, while neither degree is likely equivalent to a Ph.D., a J.D. or M.D. degree would be considered to be equivalent to, if not higher than, a master's degree.

To satisfy the second prong — the master's degree must be issued by a "U.S. institution of higher education" as defined in section 101(a) of the Higher Education Act of 1965. Under this law, the educational institution, awarding the master's degree, must satisfy five (5) requirements. First and foremost, the educational institution must be a *public or other nonprofit* institution. Second, the master's degree issuing institution must be accredited by a nationally recognized accrediting agency or association.

Moreover, the educational institution must meet the following three other requirements: (1) the institution must admit as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (2) such an institution must be legally authorized within such State to provide a program of education beyond secondary education; and (3) the institution must provide an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree.

To illustrate, consider the case of two seemingly equivalent foreign students — one holding a Master of Business Administration (MBA) degree from the DeVry University's Keller School of Management and the other one from Thunderbird School of Global Management. Since DeVry is a for-profit private university, holding an MBA degree from the Keller School of Management will not qualify the foreign student for the Master's H-1B cap. The second student who received an MBA from the Thunderbird School of Global Management will qualify for the Master's H-1B cap because, even though Thunderbird is a private business school, it is a nonprofit educational institution.

However, note that the student from the Keller School of Management will qualify for the regular H-1B cap.

Based on the foregoing, students attending or who intend to attend a master's or higher degree program in the United States with the hope that their master's degree would qualify him/her for the master's H-1B cap should make two specific inquiries: (1) First, he/she needs to determine whether the educational institution is a private or a public institution; and (2) Second, he/she needs to determine whether the educational institution is classified as a not-for-profit or a for-profit academic institution.

Holding a master's or a higher degree from a public educational institution will always qualify a foreign student for the H-1B master's cap. However, when attending a private university/school, it is worth checking to see whether the educational institution is classified as a for-profit or non-profit organization. Like public educational institutions, receiving a master's (or a higher degree) from a private non-profit educational institution will qualify the individual for the master's cap. But, if the private school/university is a for-profit educational institution, then having a master's or higher degree from that institution will not meet the requirements for the H-1B master's cap. Having said that, the student would still qualify for the regular H-1B cap.

For more information or to have a precise analysis made about whether or not your case will qualify as a Master's Cap H-1B nonimmigrant visa case we invite you to contact the immigration and nationality lawyers and attorneys at the Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C. by e-mailing us at info@visaserve.com or by calling us at 201-670-0006 (x107).