
EMPLOYERS SHOULD INITIATE NEW H-2B PETITIONS NOW FOR SEASONAL, PEAKLOAD, TEMPORARY WORKERS TO BEGIN EMPLOYMENT OCTOBER 1, 2009

The H-2B nonimmigrant visa category was established to permit the temporary and short-term employment in the United States of foreign nationals from designated countries to fill temporary positions for which employers experience a seasonal, peakload, or intermittent need, or have a substantial need as a one-time occurrence.

There is an annual cap of 66,000 on the number of H-2B visas that can be awarded in a fiscal year (October 1 through September 30). Further, the cap is subdivided into 33,000 for each half of the fiscal year. The result is that employers requiring temporary workers for the first half of a fiscal year (October 1 through March 31) must file in advance of October 1st in order to secure one or more of the 33,000 visa numbers available for the first half of the fiscal year.

In recent years, the quota has been reached very early. Therefore, employers must prepare in advance and be ready to file as soon as applications are accepted. The earliest filing date is in June 2009, for applications requesting an October 1, 2009 start date. Employers should begin initiating H-2B cases now, because significant preparation must occur in order to develop the supporting documentation and evidence of eligibility which must be filed with the application.

Recent regulatory changes have added certain penalties for failure to comply with regulatory requirements. Employers may even be barred from future filings upon a DOL finding of material failure to comply with significant regulatory provisions, or a pattern and practice of noncompliance. For these reasons, employers are cautioned to proceed with H-2B filings only with competent immigration counsel who are able to offer legal advice regarding the regulatory requirements, the procedures for satisfying them, and the potential penalties for failure to do so.

To initiate the H-2B petition process for temporary workers, contact your Foster Quan immigration counsel. Your Foster Quan attorney will be able to evaluate the proposed position and temporary need to ensure that the position is appropriate for filing under the H-2B visa program, and will also be able to work with you to develop the appropriate strategy and time frame for maximizing the opportunity to secure H-2B visa numbers under the Fiscal Year 2010 H-2B cap for the first half of the fiscal year.