
NEW H-1B PETITIONS CAN BE FILED BEGINNING APRIL 1, 2009;

Employers Should Identify Candidates and Initiate H-1B Petitions Now for Filing on April 1, 2009

Beginning April 1, 2009, U.S. Citizenship & Immigration Services (CIS) will accept H-1B nonimmigrant visa petitions seeking allocation of Fiscal Year 2010 (October 1, 2009 through September 30, 2010) H-1B numbers. H-1B petitions may be filed on behalf of beneficiaries qualified for employment in a "Specialty Occupation," one that ordinarily requires at least a Bachelors Degree or its equivalent. Individuals who do not hold a Bachelors Degree may still qualify for H-1B status based on a career of progressively-responsible employment experience.

Annual H-1B Visa Quota

The H-1B visa quota for each fiscal year is 65,000. Of this number, 6,800 are set aside for citizens of Chile and Singapore; therefore, the effective cap for all other nationalities is 58,200. An additional 20,000 H-1B numbers are available for candidates who hold at least a Masters Degree or higher from a U.S. institution of higher education.

In recent years the H-1B cap has been reached before the beginning of the new Fiscal Year, and this past year was reached during the first week petitions were accepted for adjudication by U.S. CIS under both the regular and Masters Degree quotas.

Because the H-1B numbers for Fiscal Year 2010 are expected to be exhausted on the first day that filings are accepted, it is critical for employers to plan now for filing H-1B petitions on March 31, 2009, for receipt by U.S. CIS on April 1, 2009.

H-1B Candidates

F-1 Students who have already begun employment, or who will begin employment between now and October, pursuant to Optional Practical Training (OPT) are typically candidates for pursuit of H-1B nonimmigrant status and work authorization. Employers who have F-1 Students working pursuant to a valid OPT Employment Authorization Document (EAD) card are strongly urged to file H-1B petitions on behalf of these candidates on March 31st, even though these students may have almost a year of employment eligibility remaining pursuant to their OPT Employment Authorization Document (EAD) cards.

OPT EAD cards are valid for one year, and may only be extended under limited circumstances. This means students beginning OPT employment in June 2009, will exhaust their OPT employment authorization in June 2010.

Certain TN nonimmigrants are also candidates for H-1B nonimmigrant status. Employers of TN nonimmigrants who wish to retain their TN employees on a longer-term basis should consider filing H-1B petitions on behalf of these candidates on March 31, 2009. Because the number of H-1B visas available each fiscal year is insufficient to meet demand, it may take more than one attempt to secure an H-1B visa number, and the next available opportunity to file a new H-1B petition will be April 1, 2010. Due to certain restrictions on TN status, employers seeking to pursue U.S. permanent residency on behalf of one or more TN employees are strongly urged to pursue H-1B status on behalf of those employees now.

Individuals who hold L-1B status are often candidates for H-1B nonimmigrant status, particularly if the employer seeks to retain the L-1B employee long-term. L-1B nonimmigrants are allowed only five years of L-1 eligibility. Often an L-1B employee's remaining L-1B eligibility is insufficient to complete the permanent residency process, or to reach a stage in the process that affords continuous work authorization. In such cases it is sometimes possible to change the L-1B employee's status to H-1B status in order to secure additional nonimmigrant status eligibility. Employers who are considering pursuing permanent residency on behalf of one or more L-1B employees are strongly urged to consider seeking a change of status to H-1B for those employees now.

In order to maximize the opportunity to obtain one of the limited H-1B numbers for Fiscal Year 2010, and to avoid a potential gap in employment authorization, employers are encouraged immediately to identify those employees for whom H-1B petitions will be required and to prepare for filing H-1B petitions on March 31, 2009. Do not wait to collect the necessary documents and initiate the H-1B petitioning process. The last day of March is the target for filing new petitions; therefore, petitions should be prepared in advance of April 1, 2009.

Contact your Foster Quan immigration attorney now for assistance in evaluating candidate eligibility, developing an appropriate case strategy, and preparing the necessary documents for filing an H-1B petition on March 31, 2009.