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Advice to employers on securing an H-1B work visa for your foreign employee



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H-1B visas are non-immigrant visas for foreign workers in “specialty occupations.” While there is no set definition for what is considered a “specialty occupation,” the position must meet the certain criteria outlined below.

Congress has placed a cap on the number of visas that will be issued for a fiscal year (October 1st to September 30th) at 65,000. However, there are an additional 20,000 visas available for persons who possess a U.S. earned master’s degree or higher.

The following expert advice summarizes the process and evidence required by the Petitioner (employer) and Beneficiary (employee) for a complete filing.

Do



- ensure that the job meets the criteria
- familiarize yourself with the exceptions to the cap rule
- be aware of the timeline for filing H-1B visas
- be prepared with the proper forms and required evidence
- contact an immigration attorney

Don't



- wait to start preparations for filing
- forget about the fees
- worry if you need speedy processing
- forget to provide a certified translation

Do

Do ensure that the job meets the criteria

In order for the job to be considered a "specialty occupation," it must meet at least one of the following criteria:

- A baccalaureate or higher degree or its equivalent;
- The degree requirement is common to the industry in similar positions among similar organizations, or in the alternative the employer may show that its particular position is so complex or unique that it can be performed only by a person with a degree;
- The employer normally requires a degree or its equivalent for the position; or
- The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Do familiarize yourself with the exceptions to the cap rule

The following employment categories are not counted against the cap: J-1 physicians who have obtained a waiver pursuant to State 30 programs or federal program; beneficiaries of employment offers at institutions of higher education as defined in 20 U.S.C. §1001(a) or related or affiliated nonprofit entities, or nonprofit research organizations, or governmental research organizations.

Do be aware of the timeline for filing H-1B visas

H-1B petitions can be filed on April 1st (6 months prior to the start date of the fiscal year).

Do be prepared with the proper forms and required evidence

The Petitioner (Employer) must first submit form ETA 9035, Labor Certification Application (LCA) to the Department of Labor. The form requires information about the job title, rate of pay, and work location. A wage survey must be obtained through the State of Florida to determine the prevailing wage for the position and rate of pay. The Petitioner attests that the information provided is true and accurate, agrees to comply with the terms of the LCA for the duration of the Beneficiary's (Employee's) authorized period of stay (including, but not limited to, the payment of the prevailing wage) and agrees to provide supporting documentation to the Department of Labor. Once the LCA is approved, the Form I-129 and H Supplemental are filed with the USCIS.

Do contact an immigration attorney

This process can easily become burdensome and confusing for employers, especially if they hit roadblocks in the middle of the process, or are unsure what else is required to successfully complete it. Contact an immigration attorney to clear up any confusion or handle this process with you. When a person's livelihood and your company's money is on the line, it's always best to get it done right the first time and with peace of mind for everyone.

Don't

Do not wait to start preparations for filing

As visa quotas are met within the first week of filing, it is strongly suggested that the preparation for the filing be started at the beginning of the year, at the latest.

Do not forget about the fees

There are several fees required to file. Some of them include:

- \$325.00 for Form I-129, Petition for Alien Worker;
- \$290.00 for Form I-539, Application to Change Status
- \$500.00 fraud fee;
- \$750 ACWIA fee for employees with 1 to 25 full-time equivalent employees; \$1,500 for employers with 26 or more full-time equivalent employees, unless exempt;
- \$2,000 fee to be submitted by a petitioner which employs 50 or more employees in the United States where more than 50 percent of its employees in the United States are in H-1B or L-1 nonimmigrant status.

Do not worry if you need speedy processing

You can opt for expedited processing if necessary, but it will cost you. A guarantee that your application will be processed within 15 days requires an additional cost of \$1,225.00 for what is called "premium processing." If your application is not processed in this time period the fee will be returned.

Do not forget to provide a certified translation

All documents in a foreign language must be accompanied by certified English translation.

Summary



When filing H-1B visas, it is important to start preparing early and to familiarize yourself with all required documents. Ensure that the position qualifies as a "specialty occupation" and whether it meets any criteria to be exempt from the cap rule. When in doubt, it is best to consult with an attorney who specializes in immigration law who can provide expert advice and guidance.

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