

THE NATIONAL LAW REVIEW

H-1B Cap Season Has Officially Begun

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On April 1 of each year in recent memory more than 200,000 employers vie for the coveted 85,000 *H-1B visas* for their foreign professional employees. This year **USCIS** will begin accepting H-1B petitions subject to annual numerical restrictions on Monday, April 3, 2017 (April 1st falls on a Saturday this year) for the 2018 fiscal year. Since the number of petitions USCIS is allowed to accept by law (known colloquially as the “cap”) will almost certainly be exceeded by the April 7th deadline, USCIS will thereafter conduct a random lottery process in order to determine whose petitions will be accepted and whose petitions will be rejected. Those with U.S. advanced degrees (masters or above) get better odds in the lottery drawing.

Proper and timely H-1B preparation is paramount to success as there are required steps that need to be taken (for example, the filing of an LCA with the Department of Labor) prior to filing the actual petition with USCIS. LCAs are usually reviewed and certified by the Department of Labor within seven (7) days, but such timelines cannot be trusted during the peak of the H-1B season.

THE BASICS

The H-1B visa is limited to those employees who will be working in so-called “specialty occupations,” i.e., positions that require at least the attainment of a bachelor’s degree (or its equivalent) in a specific field related to the job’s duties. Examples of professions that commonly qualify as “specialty occupations” include those in finance, accounting, engineering, IT, medicine/ healthcare, architecture, and many others. The government allots 65,000 spots for employees with bachelor’s degrees, as well as an additional 20,000 for employees with master’s or higher degrees from U.S.-based institutions.

Employees seeking H-1B sponsorship should discuss the possibility of such sponsorship with their current or prospective employers as soon as possible and such employers should seek a competent immigration practitioner by early March 2017. An employer may file an H-1B petition for either someone already here in OPT or some other status or even for an employee who is not physically present in the United States. Additionally, with careful planning and proper advice, H-1B

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ACT NOW AND PLAN FOR THE FUTURE

With a new administration in Washington this year, we may very well see significant changes to the H-1B visa process in time for the 2019 fiscal year, so it is important to act now while there is still a relative amount of certainty and structure involved in the process. The new administration has made immigration a central policy focus and may act upon proposals to either further restrict the H-1B visa cap or add new—and potentially onerous—procedures to the process in order to make it more difficult for employers to successfully hire foreign workers. Therefore, employers may be well advised to get their H-1B petitions in before the new administration has an opportunity to make some major changes to the program.



Article By [Michael J. Bonsignore](#)
[Dana R. BucinMurtha Cullina](#)
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