

How to Successfully Navigate the H-1B Process: 'You've Got to be in it to Win it'

January 11, 2016

PRACTICES Labor and Employment

The filing window for Fiscal Year 2017 for Cap-Subject H-1B petitions – those subject to the annual numerical limit (the “**Cap**”) – will open on April 1, 2016. Given recent trends, the number of filed petitions is expected to again exceed the Cap.

Over the last three years, the Cap has been reached within the first week of the April filing period. For Fiscal Year 2016, approximately 233,000 H-1B petitions were filed with United States Citizenship and Immigration Services (“**USCIS**”) in this timeframe. These petitions were then subjected to a computer-generated random selection process to identify those included in the Cap. As experts predict that the Cap will again be met as employers attempt to file cases rejected in previous lottery years, employers with a need for H-1B workers should contact their attorney as soon as possible to begin preparing these petitions.

The 2017 Fiscal Year runs from October 1, 2016 to September 30, 2017. Employers can submit new H-1B petitions to USCIS beginning April 1, 2016 (six months before the start of the 2017 Fiscal Year) and approved beneficiaries will be able to commence their H-1B employment on October 1, 2016. USCIS will accept only 65,000 regular petitions (including 6,800 set aside for employees from Chile and Singapore) and 20,000 U.S. Master’s degree (or higher) petitions. If the Cap is reached in the first few days of April 2016 as it was the last three years, USCIS is expected to institute a random lottery process to allocate the Cap amongst those who submitted petitions during the first week of April.

Assessing Your Cap-Subject H-1B Needs

H-1B visas are available for specialty occupations requiring the attainment of a bachelor’s degree or its equivalent. For current or transferring employees, employers should consider who might need to file an H-1B for Fiscal Year 2016:

- Identify F-1 or J-1 employees (working under an Optional Practical Training Employment Authorization Document) who will need a change of status to H-1B;
- Determine whether any TN employees (NAFTA professionals) or H-1B1 employees (citizens of Chile and Singapore) might want an H-1B to be eligible to apply for adjustment of status to a permanent resident;
- Review those employees who are on expiring O visas which are renewable in only one-year increments (as compared to the three-year visa period under an H-1B);
- Check whether your transferring employees who currently hold an H-1B have already been counted against the Cap (note: anyone who is coming to you from an employer that is exempt from the numerical limit (“**Cap-Exempt**”) will not have been counted toward the Cap and under that transfer, may now fall within the quota); and
- Consider whether you employ anyone in L-1B status (intra-company transferees with specialized knowledge) who might need to switch to an H-1B to gain an additional year of work authorized status.

Cap-Exempt Circumstances

Employers may be exempt from the numerical limit. These Cap-Exempt situations include: higher education institutions and related non-profits; non-profit or government research organizations; and beneficiaries who have held H-1B status in the last six years (but have not exhausted the six-year limit).

Haynes Boone's Immigration Practice Group advises employers needing Cap-Subject H-1B petitions. For more information, please contact your Haynes Boone Immigration attorney.