



Hiring Information for International Students

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Updated Information on H-1B Visa

Summarized from Legal Q & A by Susan Snider Salmon

Keys to Success: Employing Foreign Nations

§ Congress has approved 12-18 months of legal employment (optional practical training-OPT) for F-1 (nonimmigrant students) for EACH degree program

--The Immigration Reform and Control Act of 1986 (IRCA86) dictated the Form I-9 requiring employers to view original documentation presented by all new hires to verify both identity and the legal right to work in the U.S.

§ **The nonimmigrant classification of Specialty Occupation Worker-H1B** was created to fill a need for highly trained workers and the void of U.S. workers available

§ Many H-1Bs are hired from abroad, but the H-1B also serves as a continuation category from the OPT student F-1 status to a temporary professional classification.

§ Number of H-1Bs allowed began in 1986 at 65,000 and swelled to 201,179 in 2001. Now the number has been reduced TO 65,000 FOR 2004

§ If employer WANTS TO KEEP F-1 student beyond OPT:

Employer must file petition with one of four regional centers of USCIS (U.S. Citizenship and Immigration Services, part of the Dept. of Homeland Security.)

("The employer determines the duties, sets the minimum job qualifications, determines the wages, and decides on the conditions of the job. The employer signatory certifies under various laws that procedures have been followed and that regulations will be met.")

USCIS Officer reviews and adjudicates the petition

- a) approve the employment authorization
- b) grant the "alien" a change of status from student to the H-1B category
- c) issue a request for additional information or evidence
- d) deny the petition.

"If the job offered meets the required criteria and the beneficiary employee holds the matching required education and/or experience to meet the conditions, the USCIS may approve H-1B employment."

(The degree may be from a previous program (earned in the U.S. or abroad.)

§ There are ways to MAXIMIZE chances

- a) careful and detailed preparation
- b) following up-to-date filing procedures which are often not specified in the instructions
- c) showing evidence that job duties do, in fact, require at least a specific type of bachelor's degree

- d) providing documentation of the beneficiary's continuous legal presence in the U.S. including valid employment authorization for any and all employment.
- § If approved, H-1B temporary allows three years of employment renewable for three more (Up to six years) Does NOT provide a basis for long-term or permanent employment.
- § Why companies may not consider hiring H-1B's
 - corporate policy exists which precludes consideration of foreign nationals. (many organizations preclude it for many misconceived ideas and misunderstandings)
 - however, IRCA86 allows an employer to choose not to hire aliens who do not have a right to work permanently in the U.S.
- § Not every job qualified for the H-1B category, even if employment is already underway
- § As of October 1, 2003, due to the expiration of a statutory provision, the \$1,000 paid by most employers when filing a petition is no longer required.
 - Congress may reintroduce legislation to reinstate the fee. (the fees were earmarked for grants to train U.S. workers for the affected professions.)
 - The cap reverted back to 65,000 H-1B a year as mentioned above. (It is expected that this cap will begin to affect employer petitions as early as February 2004.)

"Many cases are exempt from this cap, including most jobs in educational institutions, positions in specific types of teaching medical facilities, and positions in some nonprofit organizations."

- § Companies have a large responsibility to remain alert to the legal issues and changes
- § For H-1B's, companies DO NOT have to prove that the chosen candidate is the only person capable of performing the job. (This is necessary for the green card.)
 - By careful planning, an H-1B status person can be working under that authorization while process underway for permanent residency (green card).
- § USCIS has websites that are helpful when trying to obtain an H-1B
- § Some companies that continuously hire H-1B have staff experts to handle the paperwork.
- § American Competitiveness Act of 2001 – Portability
 - **because it can take two to six months to adjudicate a petition, when specific conditions are met, an employer MAY be able to activate a new hire with a new H-1B petition on file, but before obtaining an approval from USCIS. (Congress recognized that employers seeking highly qualified workers generally have immediate hire requirements and need the worker as soon as possible.)
 - beneficiary must have been in H-1B status prior to the new employer's filing
 - "there are some tricky specifics as to the eligibility of the beneficiary and nuances for completing the new hire's paperwork."*--Employers finding this very helpful in filling their staffing shortages
- Does an employer need an attorney to file an H-1B visa petition on behalf of the beneficiary.
 - Answer: Do you need a tax preparer or accountant to file your complicated IRS Form 1040 with Schedules, A-Z, capital gains, and questionable deduction?