

With the upcoming H-1B filing season fast approaching, it's time to start planning accordingly.

The demand for cap-subject H-1Bs is again expected to be high in 2017. Therefore, it is imperative that employers, employees, and their immigration counsel start petition preparations early. Establishing job descriptions, salary, O*Net codes, DOL registration, posting required notices, and credential verification are only a few of the details that must be considered during preparation.

What is the H-1B visa?

The H-1B visa classification is designed for foreign workers who will be employed in a professional occupation that requires at least a bachelor's degree or its equivalent and specialized knowledge.

How many H-1B visas are available?

There is an annual limit of 85,000 cap-subject H-1B visas available which include 65,000 visas for foreign nationals holding a Bachelor's degree or its equivalent (minus 6,800 carved out for Chile and Singapore H-1Bs) and 20,000 for those holding U.S. advanced degrees such as Master's. This is what is known as the H-1B visa cap which is congressionally mandated. Not all H-1B visas are subject to this annual cap.

Who is not subject to this cap?

Cap-exempt petitions can be filed including for those current H-1B holders who need an extension, a change of employer or amendments to the terms of the employment (such as part time to full time or other material job change). Also, exempt are petitions filed by institutions of higher education, related or affiliated non-profit entities, non-profit research organizations and governmental research organization.

When can be file for cap-subject H-1B visas?

USCIS' fiscal year (FY) runs from Oct 1st to September 30th. H-1B petitions can only be filed within six months from the employment start date. Thus, the filing period for FY 2017 begins April 1, 2016. USCIS typically accepts H-1B cap-subject petitions for the first five business days starting April 1st. Because of the very short filing period and the considerable work that needs to occur before filing, it is very important to start early to prepare a properly completed H-1B.

Will there be a lottery for H-1B visas in 2016?

Considering the history of an H-1B lottery each year for the past three years, the restrictions in other visa categories like the L-1s and the strong economic outlook; it is most likely that there will be a lottery. The fact that currently certain H-4 workers can apply to obtain an employment authorization document might lessen last year's demand slightly. In 2015, 233,000 new cap-subject H-1B petitions were filed during the first week of April including 50,000 from U.S. advanced degree holders. In 2014, 172,500 petitions were filed.

How does the lottery work?

USCIS conducts an electronic random selection (lottery) of the 20,000 advanced-degree petitions. Unselected petitions from the advanced-degree lottery are added to the electronic random selection process for the 65,000 general H-1B visas. The selected petitions undergo a first screening to eliminate petitions that do not comply with the filing requirements. About two months after the lottery is completed, USCIS begins returning the unselected petitions along with the filing fees.

What happens if my petition is selected?

About two to three weeks after the completion of the lottery, USCIS will begin issuing receipt notices for the selected petitions. Those petitions filed using premium processing service will be processed first and receive the first notices.

The receipt number has a 13-digit alphanumeric receipt number, such as EAC-17-010-34567. The three letters indicate the filing center (EAC for Eastern Adjudication Center located in Vermont and WAC for Western Adjudication Center located in California). The next two digits are the filing year. You can use this number to track the processing of the petition.

What is premium processing service?

Premium processing provides expedited handling for certain petitions for an additional \$1,225 fee. It allows you to know the status of your petition within 15 calendar days from USCIS' acceptance of your filing. Traditional processing can take between 5 and 6 months.

Who should apply for these visas?

- **Foreign students in the US in F-1 status** getting ready or having completed their degree. Often these students are in F-1/OPT or CPT at the time of the H-1B visa filing.
- **Professional outside the U.S. seeking to come and work in the U.S.**
- **Foreign nationals in the U.S. in other valid status**, such as H-4, L-1, TN (Mexican and Canadian citizens), E-3 (Australian citizens), H-4 (H-1B dependents), E-1/E-2 (investors) and P-1 (athletes).

What are the filing fees?

Filing fees vary, and will depend on various factors, such as size of the petitioning organization, and the number of employees in H-1B status. Typical fees include:

- Base filing fee: \$325
- Anti-fraud fee: \$500
- Education and training fee: \$750 (25 or less employees) or \$1,500 (26 or more employees)

Who is responsible for paying the H-1B related fees?

Employers are. The regulations provide that employers may not require an H-1B employee to pay for H-1B costs considered "employer's business expense" which are attorney fees and other costs connected to the H-1B filing and program functions.

Can a person self-petition for an H-1B?

Typically, no. The filing must show a valid employer-employee relationship.

What is the validity period of an H-1B?

H-1Bs are valid for 3 years. Additional, extensions may be approved for an additional 3 years. Once an H-1B professional has been counted towards the H-1B cap, he or she can obtain H-1B extensions and change employers without regard to the cap.

H-1B professionals who are at certain stages of the permanent residence process can file to receive post six years extensions.

When can the employee begin working under the new H-1B?

Upon acceptance and approval of the H-1B petition, employees can start on October 1, 2016, the start of FY2017.

How do students in OPT status transition to an H-1B?

Many F-1 students obtain Optional Practical Training (OPT) upon graduation and are working for their petitioning employers at the time of the H-1B filing. If they have current employment authorization at the time of the filing, that authorization is automatically extended from April 1st until October 1st using USCIS' "cap-gap" rule.

Students working for E-verify participating employers, and with certain degrees in a STEM (Science, Technology, Engineering or Mathematics) field may be able to apply for an OPT extension of up to 17 months. Please note that upcoming regulations affecting such extensions may be pending.

What are some common H-1B visa alternatives?

Employers who have missed the H-1B cap filing period, or whose petitions weren't selected during the lottery must wait until 2017 to file again. However, few alternatives remain, such as:

- **O-1** – available to individuals with extraordinary abilities
- **TN** - available to nationals of Canada and Mexico and limited to certain professional occupations
- **E-3** – available to Australian nationals
- **H1-B1** – available to professional from Chile and Singapore
- **L-1** - available to intra-company transferees
- **E-1/E-2** - available to investors

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