

PUBLICATION

Hiring Foreign Professionals and The Recruitment Process - The H-1B "Scramble" for Work Visas on April 1, 2008, Starts Again Soon

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We are approaching the scramble to qualify for the 65,000 slots for first-time H-1B workers for the 2009 government fiscal year. April 1, 2008 will be the first day that employers can file for professional "specialty workers" wishing to qualify for work authorization to begin on October 1, 2008, the first day of the U.S. Citizenship and Immigration Services' new fiscal year. We expect that the entire allocation of 65,000 visas (the Cap) will be reached within a day of the April 1 initial filing date.

While there are also an additional 20,000 H-1B visa slots available in FY 2009 for those individuals holding a master's degree or higher from an accredited U.S. educational institution, these also will be rapidly claimed due to the increased demand triggered by the unavailability of such visas for most of this past year.

Employers should be aware that there are certain potential exemptions to the Cap:

- Workers who have been in H-1B status at any time during the past six years;
- Workers presently in H-1B status and contemplating a change of employer;
- Workers whose prospective employers are non-profit or governmental research institutions, as well as most universities and entities "affiliated with or related to" universities; and
- Workers whose current H-1B employers are exempt institutions and who may add work for a non-exempt employer without ceasing all work for the exempt institution.

While the cost for H-1B processing is substantial and success is uncertain under the current system, certain significant filing fees payable to the government will be returned to the employer if qualification is not achieved for the employee due to visa non-availability or government delays in processing. We normally recommend using the U.S. Citizenship and Immigration Services' premium processing program which can result in a decision within 15 calendar days of receipt for a supplemental filing fee of \$1000. Other costs related to the H-1B petition include a standard \$320 filing fee, a required \$500 "anti-fraud" fee and, in the case of certain employers, a "U.S. worker training fee" of either \$750 or \$1500, depending upon the employer's workforce size.

Cap-subject employers may even wish to consider the filing of more than one petition to increase their probability of a successful outcome as long as the U.S. Citizenship and Immigration Services does not bar such redundancy through regulations it is considering. Naturally, case-specific issues and risks should be discussed with your immigration counsel prior to filing.

Employers are encouraged to review the visa status of each current and prospective employee and consult one of the attorneys of the Immigration Group about filing an H-1B petition within this period leading up to April 1, 2008. Advance planning is critical. The visa options for employees who are unable to qualify under this visa classification remain severely limited at the present time.

How We Can Help

Baker Donelson's Immigration Team can pick the classification that is best suited for a particular worker's credentials, duties, location, employer and other factors, and then expeditiously prepare the papers necessary to pursue that status, in a manner least burdensome to you but most likely to result in a speedy approval. We know the twists and turns and the seemingly infinite variables involved and can lead both the employer and international worker confidently through the maze of procedures, providing written guidance at each step and providing real-time status information. We coordinate cases for volumes of workers for a single employer or conglomerate, and keep in mind the prospect of permanent residence from the beginning to avoid missteps that would prejudice speed and success in the ultimate goal. Finally, we take care of the status of family members of the principal workers.