



MEYNER AND LANDIS LLP
COUNSELLORS AT LAW

03/03/15

Plan Now For New H-1B Petitions To Be Filed On April 1, 2015

H-1B “cap season” is upon us! This alert is a reminder of the rapidly approaching April 1, 2015 “deadline” for the filing of H-1B for Fiscal Year 2016 which starts on October 1, 2015.

Given the pent-up demand, we fully expect the cap to be reached on the first day of April. USCIS will, as usual, accept petitions during the first five (5) business days; i.e., through April 7, 2015. Once the H-1B cap has been reached, employers will be unable to file new cap-subject H-1B petitions for a full year, until April 1, 2016. As such, we strongly encourage you to identify any employees who may require H-1B sponsorship and contact us as soon as possible to begin preparing your H-1B petitions for a timely April 1 filing.

ACTION NEEDED: Assess 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 their Optional Practical Training Employment Authorization Document) who will need a change of status to H-1B;
- Determine whether any TN employees (NAFTA professionals) might want an H-1B to be eligible to apply for adjustment of status to a permanent resident;

- Consider whether you employ someone 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 status and for whom a change of status is a necessary component to planning your business' long-term strategy of pursuing lawful permanent residence for that employee;
- 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); and
- Identify potential candidates who are abroad and have not been previously counted against the H-1B cap.

PLEASE NOTE: the H-1B cap applies only to “new” H-1B petitions. As such, current H-1B nonimmigrant professionals seeking to file an extension of stay or a transfer petition are not subject to the cap.

The Importance of Early Preparation:

Cap subject petitions are accepted on a “first-come-first-serve” basis. Any petitions filed after the cap is met will be returned and cannot be re-filed until the following year.

To assure a timely petition filing, Labor Condition Applications (“LCAs”) should be submitted to the DOL by the beginning of March, and petitions should be ready for filing before April 1, 2015. Gathering the necessary supporting documentation and preparing the H-1B visa filing materials can be time consuming. Preparation includes assembling background and education documents, drafting and signing letters and forms, and submitting an LCA with the Department of Labor for certification. Early preparation is therefore essential.

If you have any questions about the H-1B visa cap, or would like to discuss appropriate alternatives to the H-1B category, please do not hesitate to contact us.

Anthony F. Siliato, Esq.
One Gateway Center, Suite, 2500
Newark New Jersey 07102
(973) 602-3440
ASiliato@Meyner.com

Scott R. Malyk, Esq.
One Gateway Center, Suite, 2500
Newark New Jersey 07102
(973) 602-3455
Smalyk@Meyner.com