

- More than 100,000 work visas available each year to U.S. employers.

- Engineers, programmers, teachers, lawyers, accounting and financial prof., mkt. analysts, tech writers, graphic artists, MIS & Network Systems Admin., etc. qualify for the H1 status.

- Consult an experienced immigration attorney.

Each year more than 100,000 work visas known as H1B visas are available for U.S. employers to hire foreign professional workers to work in "specialty occupations". Examples of "specialty occupations" are engineers, finance/accounting professionals, programmers, teachers, lawyers, marketing analysts, technical writers, MIS professionals, as well as certain graphics artists. In recent years significant changes were made to the H1B application process. Before an application for H1B visa is filed with the U.S. Immigration and Naturalization Service ("INS"), it is strongly encouraged that an experienced immigration attorney be consulted. Innocent mistakes can cause employer to suffer liability and the foreign worker to lose legal immigration status in the United States.

The following is a very brief description of the H1B application process and the employer's obligations.

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WHO MAY FILE?

Only U.S. employers can file for H1B foreign workers. The employer must have a valid federal tax identification number and bona fide business operations in the United States.

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WHAT TO FILE?

FIRST, the employer submits a Labor Condition Application to the U.S. Department of Labor for certification. By filing this

- "LCA": the Labor Condition Application.

application, the employer essentially attests to its compliance with the 4 labor conditions imposed by the immigration laws for hiring H1B workers. These conditions are concerned with (1) foreign worker's wage level; (2) work conditions of other U.S. workers; (3) strike; and (4) notification of the hiring of the H1B worker.

SECOND, the employer prepares and files the H1 petition and all necessary supporting documents with the U.S. Immigration and Naturalization Service. Usually the petition package includes INS application forms; the certified Labor Condition Application; a supporting letter from the employer explaining the professional nature of the position offered and the foreign worker's qualification for the job offered.

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WHEN TO FILE

The petition can be filed up to 6 months before the actual starting date of the foreign worker's employment. Frequently significant delays in processing at government agencies processing occur without prior warning. The employer therefore should start each H1 application process as early as possible. For the past years, all available H1B visas were used months before the end of each federal government's fiscal year. Over subscribing in this visa category has caused months delay in receiving approvals from INS.

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WHEN TO DO IT AGAIN

Each foreign worker can only spend a maximum of 6 years in the H1B classification. Initial application for H1B classification can be sought for a period of up to 3 years. Extension can also be obtained for a period of up to 3 years.

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The 4 Labor Conditions:

- Pay H1 workers at market rate;
- Hiring of H1 worker will not adversely affect other U.S. workers;
- There is currently no strike at work place; and
- Notify the union if there is one, or post notice at work place.

NOTE: If a U.S. employer is a "H1B dependent employer, then such an employer must make additional labor condition statements.

"H1B Dependent Employer" is one that hires:

No. of Full time Employee	No. of H1B Employee
1-25	8 or more
26-50	13 or more
51 or more	15% or more of work force

- Always file early.

After the 6 year limitation is reached, the foreign professional must spend at least 1 year outside the U.S. before a new petition can be filed for this worker.

- Change of Employer.

It is very important to note that each H1B approval is employer-specific. It means that employment is only authorized for the employer who filed the petition. Each time a foreign professional changes to a new employer, a different petition must be filed by the new employer. Once the new petition is filed, the person is then authorized to accept new employment.

As a practical matter, many foreign professionals obtain permanent resident status (the "Green Card") during their 6 year stay in H1B classification.

### POST APPROVAL CONSIDERATIONS

Changes in the terms and conditions of the employment as stated in the original H1B petition may require that either an amended or new petition be filed. Employers are asked to notify INS of any early termination of H1B employment. If early termination occurs, the employer may be required to pay reasonable cost of return transportation to the foreign worker.

- Filing of new or amended Petition may be required to reflect changes in terms and conditions of employment after the H1 is approved.

The most important consideration after INS approves the H1B petition is that the employer's record-keeping responsibility survives the approval and even the termination of the employment

- The duty to keep certain records survives the approval and termination of the H1B employment.

for a specific period of time. Failure to properly keep records may result in fines, payment of back wages and loss of right to file immigration visas.

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### WHAT'S THE ROLE OF THE FOREIGN WORKER

As seen above, the U.S. employer is the petitioner, i.e., the driving force of the H1B petitioning process. The employer is the one to prepare, file and maintain all the necessary information, applications, and documentation.

The employee, on the other hand is the beneficiary of the petition. Diploma for bachelor or higher degree should be submitted by the employee to show his or her qualification for the position. If the employee has a foreign degree or no degree at all, special credential evaluation must then be done before the application is filed with INS.

- Foreign professional worker's qualification: must have at least a bachelor's degree or the equivalent.

- If the degree is a foreign one, or if employee has no college degree, special credential evaluation must be done.

In most cases, the foreign professional is in the U.S. in another valid immigration status (such as student, visitor, etc.) when the H1 petition is filed with INS. The approval of the petition changes the H1 worker's immigration status to H1B classification simultaneously.

- Change of employee's immigration status to H1 classification.

If the employee is outside the U.S. when INS approves the petition, he or she must then apply for H1 visa with the U.S. embassy or consulate to enter the U.S.

Frequently the employees do not fit into the above scenarios, careful planning should be done before and after the H1 petition is filed.

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