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Immigration eNews

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H-1B Cap Reached for U.S. Earned Master's Degree or Higher Beneficiaries

The U.S. Citizenship and Immigration Services (USCIS) announced on January 18, 2006 that it received enough H-1B petitions that qualify for the exemption from the H-1B numerical limitations for foreign workers with a U.S.-earned master's or higher degree (the number of foreign nationals exempted from the H-1B cap on this basis is 20,000 per fiscal year). Consequently, the USCIS determined that the "final receipt date" for these 20,000 cap-exempt H-1B petitions is January 17, 2006; petitions received after this date will be rejected. Petitions received on January 17, 2006 are subject to a random selection process. The USCIS will begin accepting all H-1B cases subject to the H-1B cap again as of April 1, 2006 but will only allow start dates of October 1, 2006 or later on these cases.

All Ports of Entry to the U.S. Are Now Equipped with the U.S.-Visit System

As of January 2006, every port of entry into the United States, which includes 115 airports with international traffic, 15 sea and 154 land ports of entry, is now equipped with the US-Visit system (United States Visitor and Immigration Status Indicator Technology). This system takes fingerprints and digital photos of many entering foreign visitors and is linked to a national computer network that in a matter of seconds can check a visitor's fingerprints against a database of known terrorists and criminals. At this time, most Canadian and Mexicans, in addition to America citizens and legal permanent residents are not subject to the checks.

Since its inception in January 2004, the US-Visit system has completed fingerprint checks and recorded digital photos of 45 million visitors at certain ports of entry and U.S. Embassies/Consulates. The system checks to see if the visa holder is the same person who applied for the visa overseas. Most instances of captured violations are relatively modest, turning up people who have previously been denied visas or committed some kind of immigration violation. But the system has also identified some criminals, including drug smugglers, and, in Jordan, one person who had been detained by the United States military in Iraq on terrorism-related charges.

New Year - New Budget - New Hires

With 2006 budgets in place, for many employers January is a busy hiring month. To assist employers who may find talent which requires immigration sponsorship, here is a brief summary of the typical visa categories used by employers hiring foreign national employees:

H-1B

Overview: The H-1B is a nonimmigrant classification used to employ workers with a relevant bachelor's degree or its equivalent in a position which requires that relevant degree or its equivalent. There are obligations imposed on employers regarding wage and working conditions that must be met when sponsoring an H-1B worker. Because it is a temporary status, an employer must watch the clock when considering green card sponsorship to keep a valuable employee. H-1B status is generally available for six-years (in three year increments) and may be extended beyond that if certain steps have been taken by the employer with regard to green card sponsorship.

Warning: There is an annual cap on available H-1B numbers set by the U.S. Department of State. If an employer is considering sponsoring a student who is in F-1 or J-1 status, it must take the cap into consideration and move into discussions about H-1B status as soon as the student is identified as a candidate for H-1B sponsorship. The same goes for candidates who are outside of the U.S. Individuals who are in the U.S. and need extensions of their H-1B status are generally not affected by the cap, even if the person is being transferred from another employer.

Benefits: The regulations allow an individual to pursue permanent residency while in H-1B status.

L-1

Overview: Generally, L-1 intracompany transfer visas are non-immigrant visas available to persons coming to work in the U.S. for an employer that is related to a company abroad where the applicant worked prior to entering the U.S.. The applicant must be coming as a manager or executive (L-1A category) or as a specialized knowledge employee (L-1B category). "Specialized knowledge" refers to employees with either a special knowledge of the company's products and their applications in world markets, or an advanced or proprietary knowledge of the company's processes or procedures.

Benefits: (1) There is no annual cap on the number issued; (2) One may pursue permanent residency while on an L-1 visa; and (3) For many L-1As, there is a permanent residency process that makes getting a green card relatively quick and painless.

TN

Overview: The TN nonimmigrant visa is the product of the North American Free Trade Agreement (NAFTA). It provides for easier entry into the U.S. of Canadian and Mexican business visitors. There is a list of occupations that qualify, which includes the requirements that an applicant for TN status must meet to qualify (for example, most TN occupations require at least a bachelor's degree). Persons on a TN visa cannot pursue permanent residency without risking their TN status.

Benefits: (1) TN visas are not subject to an annual cap; (2) TN status can be renewed

indefinitely (although temporary intent must be maintained); (3) TN visas cover a broad range of job descriptions; (4) There is no prevailing wage requirement for TN visas, and (5) Canadian citizens can obtain a TN visa at the border, meaning there is no wait for the visa. Mexican citizens must apply at a U.S. Embassy/Consulate.

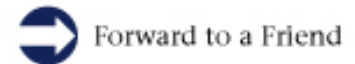
The following are less common visa categories used by employers hiring foreign national employees.

J-1

Overview: The J-1 visa is available to those who will be entering the U.S. to participate in an approved educational or cultural program. In the business employment context, this visa is best suited for the company's foreign trainees, researcher scholars and specialists.

O-1

Overview: The O-1 visa is a temporary work visa available to those foreign nationals who have "extraordinary ability in the sciences, arts, education, business or athletics" which "have been demonstrated by sustained national or international acclaim." Persons entering the U.S. must be coming to work in their field of ability, but the position need not require the services of a person of extraordinary ability.



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