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Immigration & Nationality Law

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H-1B Visa Sponsorship – Q&A's
January 2018

The H-1B visa is the most commonly used temporary work visa to attract and retain international talent to fill positions in the U.S. requiring at least a specialized bachelor's degree. The visa's rules and processes are primarily administered by the U.S. Citizenship and Immigration Services (*USCIS*) and the U.S. Department of Labor (*DOL*). The following is intended to provide an introduction to H-1B visa sponsorship in a question and answer format.

Question 1 – Is there an H-1B quota issue?

There is an annual basic quota of 65,000 visas and an additional quota of 20,000 for individuals who have earned at least a U.S. master's degree. Employees of institutions of higher education, non-profits adequately affiliated with such institutions, and non-profit research organizations are able to file quota-exempt petitions. Similarly, an individual granted a quota-subject H-1B in the past six years is exempt from the quotas. If not exempt, a quota number must be available to file an H-1B visa petition. The soonest a quota-subject petition may be filed under the current law is April 1, 2018 for a work visa permitting employment on October 1, 2018. Timing the quota can be critical so it is important to engage the services of an attorney well in advance of April 1st to address this question.

Question 2 – Is H-1B sponsorship feasible?

There are three primary factors that determine feasibility: the employer, the proposed position, and the individual's credentials and immigration history.

The Employer – The USCIS analyzes a prospective H-1B employer's operations, to include the number of employees, how long it has been in operation, and revenue. Generally, an employer with a small number of employees, a relatively short period of operations, or relatively low revenue amounts will be closely scrutinized. The USCIS also commonly questions an employer's need for an H-1B worker in certain settings, such as a small business seeking to hire its own Market Research Analyst. Additionally, if the sponsored employee will work at a third-party's work location, the employer will be required to prove it will sufficiently control the employment.

The Position – The H-1B position must require both the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a bachelor's degree or equivalent in the area of specialty. The USCIS regularly refers to the DOL's [Occupational Outlook Handbook](#) (*OOH*), and its statements regarding minimum requirements. For example, the OOH states that "Software developers usually have a bachelor's degree in computer science and strong computer programming skills." Thus, the USCIS typically considers a 'Software Developers' position to qualify for an H-1B.

The Individual – The individual can meet the H-1B requirements by completing at least a U.S. bachelor’s degree in a specialized field or a non-U.S. degree that can be evaluated to be the equivalent of at least a U.S. bachelor’s degree. An individual can also meet the degree requirement through prior, progressive, professional-level experience, which entails more time and expense to properly document. The individual is also generally subject to a six-year limit on time spent in the U.S. in H-1B visa status. Each individual’s credentials and immigration history vary, so a review by an attorney is necessary to assess qualifications for H-1B status.

Question 3 – What obligations are associated with H-1B sponsorship?

An employer makes four commitments based upon DOL regulations and one based upon USCIS requirements.

- Payment of the *required wage*, which is either the local *prevailing wage* as determined by the DOL regulations, or the *actual wage* paid to similarly employed U.S. workers, whichever is higher;
- Providing working conditions that will not adversely affect the working conditions of similarly employed U.S. workers (ex. offering benefits on the same terms, etc.);
- Certifying that there are no strikes, lock-outs, or work stoppages;
- Providing notice of the H-1B sponsorship in the workplace, which indicates salary information; and
- Providing the individual with reasonable costs of return transportation to his or her home country if the employer ends the employment before the end of the period of sponsorship.

An employer must also create and maintain a “Public Access File” that contains basic information about the terms and conditions of its H-1B visa sponsorship.

Question 4 – What costs are associated with H-1B visa sponsorship?

The DOL requires that the employer pay attorney fees and other costs for the preparation and filing of the H-1B petition. The USCIS requires payment of up to four separate filing fees:

- Basic petition fee: \$460, required for each petition
- Anti-fraud fee: \$500, required for the employer’s first petition on behalf of the individual
- Training fee: \$1,500 (25+ employees) or \$750 (25 or fewer employees), to be paid with the first petition and first extension (institutions of higher education and qualifying non-profits are exempt from training fees)
- “Visa Dependent” fee: \$4,000 for employers with 50 or more employees in the U.S., at least 50% of which are in H-1B or L-1 visa status

The USCIS offers a “Premium Processing” service at a cost of \$1,225 for processing within fifteen days. If the USCIS issues a “Request for Evidence,” Premium Processing service provides for a response within a fifteen-day period.

Next Steps

An employer interested in H-1B sponsorship of an individual should engage the services of an experienced immigration attorney to evaluate the case and provide feedback on sponsorship feasibility. Then, if the employer chooses to move forward with the process, the attorney can prepare and file the H-1B petition on behalf of the employer and the individual.