

WEIGEL LAW OFFICE, LLC
Immigration & Nationality Law

Anthony E. Weigel, Attorney
E-mail: tony@weigellawllc.com
Phone: 816.516.6555

The Upcoming H-1B Quota – Be Prepared for a Season of Stranger Things¹
January 3, 2018

The [H-1B visa](#) permits organizations to employ foreign workers for professional-level, “specialty occupations” requiring at least a specialized U.S. bachelor’s degree. There is an annual, basic quota of 65,000 visas and an additional quota of 20,000 for individuals with at least a U.S. master’s degree.² The demand for new H-1B visas will certainly exceed the supply in 2018.

Employers should identify candidates in need of H-1B sponsorship, if possible, by early to mid-February. Employers should consider sponsorship for the following individuals:

- Current employees on Optional Practical Training (OPT),
- Students on Curricular Practical Training (CPT),
- Working professionals located outside of the U.S.,
- Employees with H-4 dependent work authorization (*Code C26*), and
- Those with STEM OPT, regardless of expiration dates.

There is currently a flood of news about the administration’s intent to make the employment of professional immigrant workers more difficult, to include the following:

Pre-Filing Registration & Selection – Under the current regulation, 8 C.F.R. §214.2(h)(8)(ii)(B), there will be a five-day filing period beginning on April 1, 2018. Presuming demand exceeds supply, the USCIS will select petitions for processing under the quota by a random selection process. The USCIS proposed [changing the system](#) in 2011 by implementing an electronic pre-registration system with a random selection process. The USCIS is again [considering the creation](#) of a pre-registration system, potentially based on subjective factors. If a new system is implemented under normal regulatory guidelines, the current regulation would likely still be in place on April 1, 2018. However, the agency could

¹ References are to the hit Netflix original series, [Stranger Things](#). Any non-spoiler references are limited to Season One.

² Employees of institutions of higher education, non-profits adequately affiliated with such institutions, and non-profit research organizations can file quota-exempt petitions. Similarly, an individual granted a quota-subject H-1B in the last six years is generally exempt from the quotas (ex. existing employees in H-1B visa status).

claim that the “good cause” exception³ applies and attempt to issue a pre-registration regulation on an expedited basis.

H-4 Dependent Work Authorization Could Be Revoked – Since 2015, spouses of certain H-1B workers who had completed a substantial portion of the permanent residence process have been eligible for H-4 Employment Authorization Documents (EADs). The USCIS is considering eliminating this form of work authorization.

Additional Requirements for Optional Practical Training (OPT) & STEM OPT – Under the current OPT regulations, an individual completing a U.S. degree program is generally eligible for up to 12 months of employment in an area related to the field of study. Certain [graduates of U.S. degree programs in STEM fields](#) are also eligible for an additional 24-month period of work authorization, subject to an employer’s use of E-Verify and the completion of a “[Training Plan](#).” Immigration and Customs Enforcement (ICE) is [considering changes](#) that, although not specified at this time, will likely increase the burden for both graduates and their employers.

Employers should not be startled if these proposals materialize. An employer’s key priority should be to identify those individuals in need of H-1B sponsorship and make early decisions about moving forward with the process.

Even in “normal” years, thousands have had to deal with the disappointment of an individual not receiving an H-1B visa and running out of work authorization options. Unfortunately, this year, the affected will have to cope with additional uncertainties brought to bear by the outsized influence of anti-immigration groups with an “upside-down” interest in the administration of immigration law. There will be conflict between those advocating for the fair administration of the H-1B and closely-associated programs, as duly enacted and administered, and those based in a strange, parallel dimension. For many, these can be troubling times. Those in elected and appointed positions should be made to understand both the benefits that these working professionals provide and the negative impact of short-sighted, ill-conceived policies. Perhaps they will. Stranger things have happened.

If you or your organization has any questions about H-1B visa sponsorship, please contact Tony Weigel by phone at 816.516.6555 or by e-mail: tony@weigellawllc.com.

³ <https://fas.org/sgp/crs/misc/R44356.pdf>.