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***The H-1B Quota – Waiting for the Fog to Clear***  
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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.<sup>1</sup> Demand for new H-1B visas has exceeded the annual supply for more than a decade, so it is a given that tens of thousands of will not obtain an H-1B visa this year. Employers should identify candidates in need of H-1B sponsorship, if possible, by no later than the end of 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.

As [outlined](#) by the American Immigration Council, the forecast for this year’s H-1B quota is quite foggy at the moment. At this point, there appear to be two potential processes for 2019:

- ***Standard Process*** – The USCIS may either elect not to adopt the proposed, registration process, or delay its implementation until 2020. If the current, standard process will be in place this year, the filing deadline might be **April 5<sup>th</sup>**, but may also be revised. Regardless of the deadline, an employer should make its decision to move forward with H-1B visa sponsorship by no later than the end of February to permit enough time to prepare and timely submit a cap-subject, H-1B visa petition.
- ***Registration/Selection Process*** – If the USCIS elects to roll out the H-1B cap registration system this year, the process and timeline will be dictated by the final regulation. At minimum, the employer will be required to submit basic information about the proposed sponsorship (job title, work location, salary, individual’s degree, etc.). Then, at some point, the USCIS would conduct its selection process and notify employers of the results. If selected, an employer will have a set period of time to submit the completed H-1B visa petition (*the USCIS has proposed a 60-day time period*).

In light of the dynamic nature of the process, my office recommends handling cap-subject H-1B visa petitions in a two-step process, to include:

- **Pre-Filing Step** – This step will include a review and evaluation of the three basic elements associated with the USCIS’s evaluation of an H-1B visa petition: 1) the ability of the employer to sponsor an H-1B employee; 2) the job duties and minimum requirements of the position; and 3) the sponsored individual’s credentials. If the employer, the position and the individual’s credentials appear to meet the H-1B criteria, as normally applied by the USCIS, we will complete the Labor Condition Application (LCA) and associated paperwork, and then wait for the USCIS to inform us of the process for 2019.

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<sup>1</sup> 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).

- Filing Step
  - *Standard Process* – If the USCIS announces that the current, standard process will apply to this year's cap-subject petitions, then my office will work with the employer to prepare and file the H-1B visa petition for delivery during the timeframe set forth by the USCIS.
  - *Registration/Selection Process* – If the USCIS implements a revised processing that requires registration, my office will submit one registration on behalf of the employer for the sponsored position. Then, if selected for processing, my office will work with the employer to prepare and file the H-1B visa petition for delivery within the allotted period of time.

Nothing can impede the effective the movement of people and things like a dense fog. Attempting to travel through it can be quite unsettling because our basic senses cannot detect what lies ahead, even if the route is a known one. Fog eventually clears and the path becomes visible again. At some point, the government will select and process the allotted quota of visas, but how and when remain uncertain.

*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](mailto:tony@weigellawllc.com).*