



## **April 1, 2015 H-1B Filing Date Approaches**

It is the time to start preparing H-1B visa petitions for the 2016 fiscal year lottery. Starting on April 1, 2015, U.S. employers who want to hire highly skilled foreign individuals and who already have obtained a certified labor condition application (LCA) from the Department of Labor will be able to submit their H-1B petitions. Obtaining a certified LCA requires appropriate documentation and now takes approximately 7 days.

The H-1B visa category is currently capped at 65,000 visas per year with 20,000 additional visas for foreign professionals who have earned at least a Master's or Doctorate from a qualifying U.S. academic institution. The H-1B visa is a temporary, non-immigrant employment visa for highly educated foreign professionals in "specialty occupations" that requires at least a bachelor's degree or the equivalent. The visa is valid for three years with the option to renew for an additional three years for a total of six years. H-1B employers may sponsor H-1B workers for immigrant visas (green cards).

In recent years, the cap has been reached days after the visas are made available (April 1 of each year) as the number of U.S. employers seeking highly skilled foreign professionals has drastically increased and far outstripped the limited pool of H-1B visas available. Since 2012, the cap has been reached on "the first day," which includes the first 5 business days from April 1<sup>st</sup>.

As a result, United States Citizenship and Immigration Services (USCIS) has conducted the selection process ("lottery") – the petitions submitted by U.S. employers chosen for adjudication will be randomly selected from among all of the H-1B petitions filed with USCIS during the first five business days in April. This H-1B "lottery" for advanced degree exemption petitions first for 20,000 visas and all advanced degree petitions not selected were part of the random selection process for the 65,000 Cap. In the 2014 lottery, over 172,000 and, in the 2013 lottery, over 124,000 H-1B petitions were submitted to USCIS during the 5-day filing window. Because it is expected to be a similar situation this year, it is most important that H-1B petitions are completed and ready for delivery to USCIS on April 1st.

It is essential that both U.S. employers and foreign individuals understand first whether or not positions even qualify for an H-1B visa – U.S. job offers must be in "specialty occupations," i.e., that require at least a bachelor's degree. It is also important to understand whether foreign individuals are even subject to the H-1B visa Caps listed above. If they are, whether it is the Bachelor's Cap, or the U.S. Master's Cap must be determined. Further, certain employers, including universities and nonprofit and government research institutions, are not subject to either H-1B cap. In addition, if a U.S. Master's degree is issued from a private and/or for-profit institution of higher education, it may not qualify a foreign individual for the U.S. Master's Cap. These issues can often be complex and complicated and can best be addressed by experienced immigration attorneys.

Once it is determined whether a foreign individual is qualified for an H-1B visa and he/she is subject to one of the Caps mentioned above, it is important that the petition be submitted without any errors that may cause USCIS to reject it from participation in the H-1B lottery. By the time a

petitioner receives the rejected petition back from USCIS due to error(s), it will likely be too late to re-file, and thus it will miss the chance to be selected in this year's H-1B lottery. Accordingly, early preparation and attention to detail are most essential for successfully securing a chance in the H-1B lottery.

In addition, U.S. employers (petitioners) and foreign individuals (beneficiaries) will only know if their petitions were selected under the cap when they receive a receipt notice from USCIS that the H-1B petition is being adjudicated. For petitions not randomly selected, U.S. employers will receive a rejection notice for the petition with the filing fees returned.

If you have any questions about the H-1B Cap system, the H-1B lottery, or the H-1B petition process in general, please contact Sujin Kim, Esq. at (251) 379-8065/(251) 387-2544 or [skim@gcimmigration.com](mailto:skim@gcimmigration.com) She will be able to help you navigate this complicated H-1B process.

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GCI offers guidance, advice, counsel and representation to business and individual clients in matters of immigrant (both employment- and family- based) and nonimmigrant working visa petitions and applications, with a subspecialty focusing on the U.S. Immigration Investor Program (EB-5 Program) and foreign investments under the U.S.-Korea Free Trade Agreement. GCI also conducts fee-based educational lectures/seminars and training for U.S. based academic institutions and businesses on information and developments on the U.S. immigration law and policy, including I-9 Compliance, E-Verify, and the EB-5 Program. For further information about GCI, publications and lectures and seminars, contact us at [www.gcimmigration.com](http://www.gcimmigration.com)

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