



Business Immigration Reporter

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H-1b Filing Deadline Approaching Fast

The H-1b visa category is set aside for applicants in specialty occupations who have earned at least a bachelors degree or its equivalent and who have a job offer from a United States employer requiring the specific degree.

U.S. employers and potential H-1b visa applicants are painfully aware of this visa category's annual numerical limitations and other restrictions. Although the congressional grapevine had it that additional H-1b visa numbers will become available to satisfy the current demand, Congress has failed to act and I predict that this year's H-1b visa demand will once again outweigh the actual availability of visa numbers by far.

The USCIS allocates 65,000 H-1b visa numbers each year for person who have earned a bachelors degree or its equivalent and an additional 20,000 H-1b visa numbers for persons who have earned an advanced or higher degree from a U.S. institution of higher education.

The application start date is April 1, 2015 for a work start date on October 1, 2015. Last year, the USCIS received over 172,000 H-1b applications between April 1 and 5, 2014. Given the continued economic improvement, it is fair to assume that there will be even more applicants this year than last year.

Accordingly, if you are an applicant for an H-1b visa, or if you are an employer petitioning for an H-1b applicant, it is of utmost importance that you begin the application process now so that you will be able to submit your application timely. In order to be considered for an H-1b visa I cannot emphasize enough how important it that USCIS receives your properly prepared application on April 1, 2015.

H-2b Cap Count

The H-2b temporary worker program allows U.S. employers to bring foreign nation workers to the United States to fill temporary non-agricultural positions. Like its professional H-1b counterpart, H-2b visas are subject to annual numerical limitations. The annual allocation is 66,000 visas, of which 33,000 are allocated for employment beginning during the first half of the fiscal year (October 1 to March 31) and 33,000 for the second half of the fiscal year (April 1 to September 30).

Generally, H-2b workers extending their status are not counted against the cap and neither are dependants. As of January 28, 2015 the cap for the first half of fiscal year 2015 has been reached and as of February 6, 2015, the count for the second half of fiscal year 2015 is 8,384.

Significant Visa Number Advances



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Consultations/Inquiries

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The Department of State published the Visa Bulletin for March 2015 and it contains good news and it reflects significant advances for employment-based immigrants from India and China.

<http://travel.state.gov/content/visas/english/law-and-policy/bulletin/2015/visa-bulletin-for-march-2015.html>

The Eb-2 category from India advanced by 16 months from September 1, 2005 to January 1, 2007; while the Eb-2 from China advanced by five months from March 15, 2010 to September 1, 2010. This is the biggest advancement for this category in about two years.

DOL Proposes Modernizing Labor Certification Process

Before a U.S. employer may bring a worker permanently to the United States the Secretary of Labor has to certify to the Secretaries of Homeland Security and State that (a) there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of application in the place where the individual is to perform the work, and that (b) the employment of the individual will not adversely affect the wages and working conditions of similarly employed U.S. workers. This process is known as the labor certification process or PERM.

PERM, which replaced previous processing versions of the labor certification process was implemented 10 years ago this May. The Department of Labor which processed over 70,000 applications through PERM, has never adjusted the PERM process to changing labor and economic conditions such as increased demand for labor, technology advances, and changes in information dissemination. Summarily, industry needs, requirements and practices have outgrown the PERM recruitment process. To realign itself with actual demand, the DOL is committed to changing its processes and is seeking input on:

- Options for identifying labor force occupational shortages and surpluses and methods for aligning domestic worker recruitment requirements with demonstrated shortages and surpluses;
- Methods and practices designed to modernize U.S. worker recruitment requirements;
- Processes to clarify employer obligations to insure PERM positions are fully open to U.S. workers;
- Ranges of case processing timeframes and possibilities for premium processing; and
- Application submission and review process and feasibility for efficiently addressing nonmaterial errors.

Business Immigration Case Law

Mayembe v. Holder, (8th Cir., January 13, 2015)

The Board of Immigration Appeals found Mr. Mayembe removable and inadmissible to the United States because he indicated on Employment Eligibility Verification Form 9 that he is a United States Citizen when in fact he is not. Mr. Mayembe appealed and the Appellate Court in the 8th Circuit held that checking the disjunctive citizenship box of Form I-9, without more, is not sufficient to rise to a false claim to U.S. citizenship.

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