



APRIL FILING DATE LOOMS FOR H-1B VISAS

April 1, 2008 is an important date for employers seeking first-time H-1B visas for employees. In the absence of congressional action to address the problem, it is likely that the entire quota of H-1B visas allocated for the 2008-09 fiscal year will be reached by applicants filing on April 1, 2008. Affected employers must file applications for their employees on that date in order to be among those that will be considered in the large wave of applications for H-1B visas.

H-1B visas cover professional and "specialty occupations" for which a bachelor degree (or equivalent) is a minimum requirement. Typical occupations include information technology professionals, university professors, engineers, scientists and certain business professionals. For each government fiscal year beginning October 1st, there is an annual quota or "cap" of 65,000 new H-1B visas for bachelor degree applicants, plus an annual quota of 20,000 visas for holders of advanced (Master or Ph.D.) degrees. U.S. or comparable foreign degrees qualify under the bachelor degree category; however, advanced degrees must be from a U.S. university.

Universities and affiliated nonprofit research institutions are exempt from the cap limitations. Additionally, once a person has been counted against the H-1B cap, the worker is not counted again, regardless of a change in employer (unless going from an exempt to a non-exempt employer).

Applications can be submitted six months in advance of the proposed start date, and non-exempt employers must be ready to file applications on April 1, 2008 in order to have any chance of approvals for the fiscal year beginning October 1, 2008.



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ADMISSIONS INFORMATION

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In 2007, U.S. Citizenship and Immigration Services (USCIS) received over 130,000 applications on Monday, April 2nd, depleting the 2008 quota for the bachelor degree category on the first possible day, and creating the need for a lottery system to determine "winners." The advanced degree cap of 20,000 visas was reached on April 30 in 2007. Based on this history, it is quite possible that both quotas for the 2008-09 fiscal year will be consumed by filings made on April 1st of this year.

April 1, 2008 is therefore a critical target date for tens of thousands of new H-1B visa applicants seeking an employment start date of October 1, 2008. This year's applicants will no doubt include many of the "losers" of the April 2007 lottery who may re-apply. (There is no preferential treatment for employers or employees who had losing applications in 2007.) Employers and employees should identify candidates well in advance of April 1st, with particular emphasis on recent university graduates who are employed temporarily in Optional Practical Training (OPT) status.

As a general rule, candidates must possess the required credentials on the date of filing, not merely as of the intended starting date of October 1st. In the absence of USCIS action to modify that rule, students who have not completed the required coursework toward the relevant degree as of April 1st would **not** be eligible to apply on that date. A student who has completed all required coursework toward the degree as of April 1st is an eligible candidate for an H-1B visa, even if the diploma is to be officially awarded at a commencement ceremony on a later date.

Please contact Daniel Joyce at 716.843.3945 or djoyce@jaeckle.com or Abby Ma at 716. 843.3905 or ama@jaeckle.com for more information on H-1B visas and for assistance in planning for this important filing date.