



JAECKLE FLEISCHMANN & MUGEL, LLP

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THE JAECKLE ALERT



Immigration
Practice Group

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APRIL 1, 2009 FILING DATE IS CRUCIAL FOR NEW H-1B VISAS

APRIL 1, 2009 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 2009-10 fiscal year will be used up by applicants filing on the first few days of April. A late filing will likely disqualify an applicant from consideration for the entire fiscal year.

H-1B visas cover professional and "specialty" occupations for which a U.S. or foreign bachelors degree (or equivalent) is a minimum requirement. Typical occupations in this category include information technology professionals, university professors, engineers, scientists and certain business professionals. For each government fiscal year beginning October 1, there is an annual quota or "cap" of 65,000 new H-1B visas for bachelor's degree applicants, plus an annual quota of 20,000 visas for holders of advanced (master's or Ph.D) degrees 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). The critical April 1 date pertains only to applicants seeking H-1B status for the first-time with a private, non-exempt employer.

Applications can be submitted six months in advance of the proposed employment starting date. Since October 1, 2009 is the first possible start date in the new fiscal year,



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employers must be ready to file applications on April 1. Meeting that target date requires that employers should identify candidates well in advance of April 1, and in particular consider recent university graduates who are employed temporarily in Optional Practical Training (OPT) status.

In each of the past three years, U.S. Citizenship and Immigration Services (USCIS) has received applications in excess of the annual quota on the first day of eligibility. Last year, USCIS established a lottery system to determine "winners" from a pool of approximately 165,000 applicants who applied on April 1 and the next four business days. We encourage applicants to file applications on April 1 in order to be included in the lottery method for 2009.

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 1. 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 1 would not be eligible to apply on that date. A student who has completed all required coursework toward the degree as of April 1 is an eligible candidate for an H-1B visa even if the diploma is officially awarded at a commencement ceremony on a later date.

Please contact Dan 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. _____