

Are You Ready for the 2017 H-1B Season? Current Issues and Trends in Preparation for the April 1st Filing Deadline!

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Meet the Speaker: Hugo P. Rojas, Labor & Employment Team | Milwaukee



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- Advises businesses throughout the U.S. on strategies for navigating the complex regulations of the U.S. immigration system while finding and maintaining their multinational workforce.
- Represents employers and individual immigration before the U.S. Department of Homeland Security, the U.S. Department of Labor, the U.S. Department of State, and the Executive Office of Immigration Review of the U.S. Department of Justice.
- Assists businesses with every phase of the employment-based immigration process, including:
 - EB-1, EB-2 and EB-3 employment based immigration,
 - The PERM process, including Recruitment, and labor certification,
 - National Interest Waivers,
 - E-1 and E-2 visas,
 - EB-5 and investor visas,
 - Adjustment/change of status applications, and
 - Employment-based non-immigrant visas, including H-1B, O visas, P visas, and L-1 intra-company transfers.
 - Advising businesses faced with all manner of compliance issues, including I-9 and E-Verify,
 - Consular processing,
 - Family-based petitions,
 - Naturalization proceedings.



Today's Agenda

- Benefits of an H-1B Visa
- What is a Specialty Occupation?
- What are the Steps?
- Challenges and Ways to Overcome Them
- Dependents
- Possible Alternatives
- Audience Questions?



Benefits of H-1B Status

- Valid for up to 3 years at a time, for a total of 6 (with some exceptions for those pursuing permanent residence)
- Immigrant intent not an issue
- Provides pathway to Permanent Residence
- Contrary to often heard belief, no recruitment is typically required (with the exception of H-1B dependent or willful violator employers)

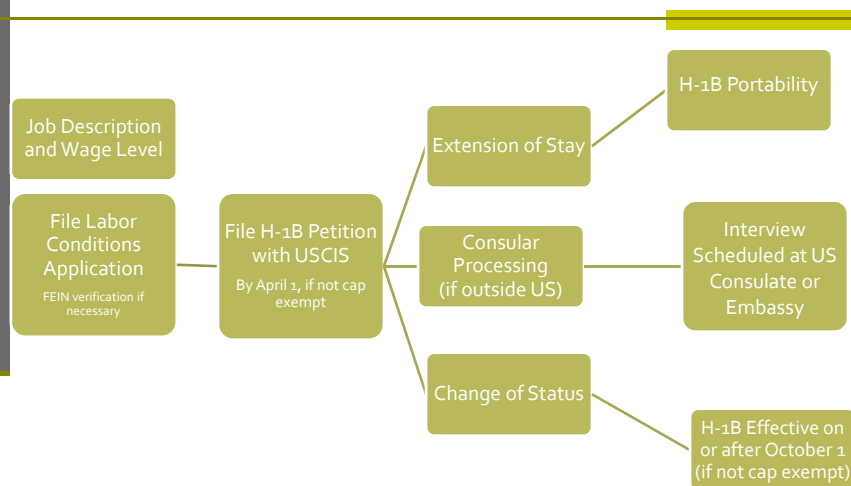


H-1B – Specialty Occupation

- An occupation that requires theoretical and practical application of a body of highly specialized knowledge including but not limited to: architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology and the arts.
- A Bachelor’s degree or higher in a specific specialty, or its equivalent, as a minimum.
- The employer normally requires a degree or its equivalent for the position.



H-1B - Process



H-1B – Challenges

- US Employer subject to H-1B cap
 - USCIS accepts 65,000 applications for H-1B status each fiscal year (10/1 to 9/30), including Singapore and Chile.
 - FY '17's (10/1/16 – 9/30/17) cap was met in April, 2016.
 - Employer files on 4/1 for an effective date of 10/1 with no guarantee of approval
- Processing times
 - The USCIS is taking roughly 6 to 9 months to approve H-1B petitions without Premium Processing
- Cost – H-1B filings are very expensive – as much as \$2,460 in filing fees which by law must be the responsibility of the employer.
- Specialty occupation – must not just have a bachelor's degree or higher, but have to be seeking a position that requires the degree in the particular field (problem degrees: general liberal arts, business administration, marketing)



H-1B Cap – Exceptions

- Certain workers are exempt from the H-1B annual quota:
 - Workers who have already been counted against the cap within the previous 6 years.
 - Workers who are able to "recapture" H-1B time
 - 20,000 visas set aside for workers with US Master's or higher.
 - 6,800 visas set aside for workers from Chile and Singapore.



H-1B Cap – Exceptions

- Certain employer organizations are exempt from the H-1B annual quota:
 - Institutions of higher education
 - Government or non-profit research organizations primarily engaged in research
 - Non-profit entities related to or affiliated with institutions of higher education
 - USCIS standard is currently in flux on this exemption
 - Physicians that have obtained a J-1 waiver through the Conrad 30 state health agency program (for service in an underserved area).



H-1B – Dependents / H-4 Visa

- Dependents tied to the same period of stay as worker.
- Spouses have limited work authorization rights:
 - H-1B worker is the beneficiary of an approved employment based immigrant petition; or
 - H-1B worker has been granted post 6-year extension



Other Temporary Categories

- TN status – for Canadian and Mexican nationals for specific occupations (valid for 3 years at a time, no outside limit)
- H-1B1 – for nationals of Chile and Singapore – similar to the H-1B but granted for one year increments with no outside limit – NOT subject to same annual quota
- E-3 – for nationals of Australia. Similar to the H-1B. Not subject to the quota.
- L-1 – multinational corporate employees (either executive/managers or persons with specialized knowledge of the company and products)



Questions/Comments?



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www.dkattorneys.com

