

The Value of the H-1B Visa (Part 1)

This is the first article of a two-part series explaining the importance of the H-1B visa process, and how it helps aliens become U.S. “greencard”-holders / U.S. citizens, and employers find qualified professional employees:

For an employer, H-1B visa workers provide vital professional services. For the alien employee, securing an H-1B visa can eventually lead to a “greencard” and U.S. citizenship. As an attorney practicing immigration law throughout the country, I am often approached by people with questions such as, “how can I fill important positions within my U.S. company, with foreign workers,” or “how can I immigrate to, and work in, the U.S.?” There is no one simple answer for each unique situation. However, the H-1B visa is a wonderful option for many.

The H-1B visa allows a U.S. employer to hire a professional alien worker, who can provide important specialty services. This visa can initially be issued for up to three years, with an opportunity to renew for up to another three years. At any time during that employment, an employer satisfied with the H-1B employee’s performance, may sponsor the alien worker for a *permanent* immigrant employment visa, and also lawful permanent residency (commonly known as “greencard” status), through a process called PERM Labor Certification. This is a great way for the employer to hire and evaluate an employee on a *temporary* basis, while reserving the opportunity to make a *permanent* employment offer later on. For the alien, it is a legal and efficient path to a “greencard” or U.S. citizenship. In the end, everybody wins.

Generally, the employer must possess the financial ability to employ the alien worker, and prove its need to hire the alien for a “specialty occupation.” Significantly, the employer does not need to prove that no other U.S. worker could fill the offered position. These simple requirements, as well as some others, make the H-1B visa an attractive option for many employers.

Indeed, almost any sole proprietor, firm, consulting company, corporation, etc. can hire an alien worker under the H-1B visa program. The trust and commitment bestowed by an employer, upon hiring an H-1B alien worker, is often reimbursed tenfold by that employee, in loyalty and dedication to the job. It is no wonder that both parties often eventually decide to evolve their initial relationship into a permanent commitment wherein the alien can eventually obtain a “greencard” through PERM Labor Certification.

There is a litany of other questions and issues that must be addressed when considering the H-1B visa option. However, two issues of particular concern are the alien’s visa status at the time of filing an H-1B visa, and the availability of H-1B visas themselves. Generally, only aliens who are “in-status” may apply for, and receive, a *new* H-1B visa. But, certainly, there are limited exceptions to this general rule.

Also, each year, the U.S. only makes a limited number of *new* H-1B visas available. It is important to have an H-1B visa petition prepared and filed as soon as possible. The new H-1B visa filing period begins on April 1, 2008. Based upon recent history, we reasonably expect that this may be the *only* day the U.S. government accepts new applications for this year.

Next week we will discuss which occupations are covered under the H-1B visa classification, and how aliens may apply to change to H-1B visa status.

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