

The Value of the H-1B Visa (Part 2)

This is the second 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:

Last week we discussed the short and long term benefits of the H-1B visa for both employers and employees. We also described which employers might be eligible to offer employment under this visa category. Now, we will explain which jobs may fall under the H-1B visa classification, and the necessary educational and/or work experience qualifications the alien must meet.

There are *countless* jobs that qualify as “specialty occupations” entitled to H-1B visa classification. A few examples include, but are not limited to, occupational therapists, engineers, computer programmers, management consultants, medical research assistants, business managers, and accountants. Importantly, the job title alone does not determine whether the position will be deemed a “specialty occupation.” Instead, the determining factors are the actual job duties and responsibilities assigned to the job. The most efficient way to find out whether the position your business intends to offer qualifies as a “specialty occupation,” is to consult an attorney.

For example, a company that recently sought my law firm’s services wished to offer “sales and marketing manager” jobs to a number of aliens within the U.S. at the time. Comprehensive analysis of the specific duties and responsibilities assigned to the company’s existing managerial positions, as well as other factors, had to be conducted in order to present the strongest possible argument.

Generally, aliens currently in the U.S. must be “in-status” to change to H-1B visa status. Also, the H-1B visa category requires the prospective alien employee possess a bachelor’s degree, or foreign study equivalent, in the relevant area of study to qualify for the offered position. Typically, Filipinos are well-educated, and earn degrees from four-year colleges or universities. Thus, many Filipinos easily meet this requirement. It is also possible to satisfy this requirement with a combination of work experience, vocational training and education.

If you believe that you, or a friend or family member, may qualify for an H-1B visa, begin searching for willing and qualified employers. Or, if you believe that your employee or prospective employee may qualify for an H-1B visa, then discuss this visa process with them immediately. The U.S. government only issues a limited number of new H-1B visas per year. The U.S. Citizenship and Immigration Service (USCIS) shall begin accepting new H-1B visa applications on April 1, 2008. Last year, USCIS only accepted certain new H-1B visa applications filed on the first two days! We expect this to occur again this year. If you file too late, you will not be granted an H-1B visa, and may be unable to file your application until next year (April 1, 2009).

We hope that these two articles provided enough general information for you to identify the general steps and issues concerning H-1B visas. Each person’s or business’ situation is different. We encourage you to seek more specific information from your attorney.

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