

4 things you should be doing to prepare for H-1B season right now!

The filing window for FY2016 may open and shut quickly — perhaps even on the very first day

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Though USCIS will not begin accepting H-1B applications until April 1st, petitioners should get all of their documentation prepared as soon as possible. If the recent trend continues, the filing window for FY2016 may open and shut quickly – perhaps even on the very first day! Last year, the entire quota of H-1B visas for FY2015 was completely filled in just five days!

In fact, [USCIS](#) received 172,500 applications during this period, which is more than double the 85,000 cap for H-1B visas: 65,000 regular H-1B visas for those with at least a bachelor’s degree plus an additional 20,000 H-1B visas granted under an exemption for those with advanced degrees or its equivalent in terms of post-high school education and experience.

And because the number of applications far exceeded the cap for FY2015, USCIS was forced to use a “lottery” style selection process. And unless this quota is increased (which is not very likely), or unless there is a reduction in demand (which is even less likely), the filing period could close even faster than it did last year. Here are a few things one should do right now to prepare:

1. If you are a prospective employee, and you are already in the U.S. on another type of visa, such as an L1, you and your sponsoring employer will need to work together – preferably with the guidance of a qualified immigration attorney – to make sure that all of the necessary forms are properly completed and that you have prepared sufficient documentary evidence for USCIS.
2. If you are an employer, you need to identify any employees that may require H-1B sponsorship. Keep in mind that employers must also submit a Labor Condition Application (LCA) along with the H-1B petition. The LCA is designed to ensure that the wage that an employer will be offering an H-1B beneficiary meets or exceeds the prevailing wage.
3. If you are already in the U.S. on another type of visa but still do not have a clue where you plan to work, you really need to get cracking. You not only need to find a potential sponsor, you need to complete the company’s entire job application process – including any interviews or skills tests.
4. If you are still abroad and still have yet to secure a job offer, your time is quickly running out. Start your job search right away, but beware of fraudulent employment offers!

Also, you may need to plan on making a trip to the U.S. on a visitor visa, as it is very possible that an employer will require meeting you in person before they will agree to file an H-1B petition on your behalf.

It should be noted that certain petitions – such as where the employer is an institution of higher learning and a few others – are not subject to the quota. It should also be noted that the H-1B program is designed for the employment of foreign workers in *specialty occupations*, and only if these requirements are met:

You must have an employer-employee relationship.

A valid [employer-employee](#) relationship is determined by whether the petitioning employer has the right to control the beneficiary's employment (i.e., hire or fire them). If you own your company, you may be able to satisfy this requirement by showing that others – such as a board of directors or preferred shareholders – exercise control of your work.

The job must qualify as a specialty occupation

A specialty occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree or the equivalent in the specific specialty, such as biotechnology, business specialties, etc. USCIS often refers to the [Occupational Outlook Handbook](#) to help determine whether a job requires a degree. A job may qualify by meeting one of the following criteria:

- The minimum requirement for the position is a bachelor's degree or higher;
- This degree requirement is common for such a position in its industry, or the job is so complex or unique that it can only be performed by someone with a bachelor's degree in a field related to the position;
- The employer normally requires a degree or its equivalent for the position; or
- The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

The job must be in a specialty occupation related to your field of study.

The position must be in the same field as your area of study. However, if the job qualifies as a specialty occupation but you do not have a bachelor's degree in a related field, you may still qualify by having special licensing, certification, training, etc. In general, 3 years of work experience in the field is treated as 1 year of college studies. Visit [Understanding H-1B Requirements](#) to learn more.

You must be paid the higher of the actual or prevailing wage for your occupation.

The prevailing wage is largely determined based on the position in which you will be employed and the geographic location where you will be working. Generally, such information can be

found on the U.S. Department of Labor's [Online Wage Library](#). To learn more about the eligibility requirements, visit the USCIS website and/or schedule an appointment with a qualified immigration attorney.

Conclusion

An H-1B visa may be ideal for those seeking an extended term of employment in the U.S. as the duration of stay is three years, extendable to six years (with exceptions to the maximum length of stay in certain circumstances). And one of the main advantages of the H-1B visa is that it is a "dual intent" visa, meaning that one can later apply for a Green Card and become a legal permanent resident.

But it is important to understand that USCIS offers a wide range of programs for those hoping to work or invest in the U.S. It is therefore vital that one consider all of the different types of visas available before making a choice. Working with a qualified immigration attorney can be of great assistance in this regard, as one can only make an informed decision if one knows all of one's options.

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