



It's Decision Time: Will You Enter the H-1B "Lottery?"

In recent years, the H-1B cap has been reached in record time. Last year, the cap was reached on April 7, 2014, the first day of the filing period. Indeed, United States Citizenship and Immigration Services (USCIS) received over 172,000 applications for the 65,000 available H-1Bs. USCIS randomly selected those that would be processed and returned the other petitions, unopened, to the employers who submitted them. We have no reason to believe that this year will be any different in terms of the cap being reached on or about the first day employers can submit petitions.

So, if you are thinking about hiring foreign nationals in a specialty occupation, you need to act now. Planning ahead may help your business secure the foreign employees you need. A "specialty occupation" is an occupation which requires: (1) theoretical and practical application of a body of highly specialized knowledge; and (2) the attainment of at least a bachelors degree or equivalent to perform the job duties.

The filing period for employers to submit their new H-1B "subject to cap" petitions (i.e., not a request for an extension) will begin this year on Wednesday, April 1, 2015. However, you may not employ a foreign national under an H-1B visa until October 1, 2015. Keep in mind that preparation of an H-1B application takes time, and there are numerous pre-filing requirements. One such requirement is the filing of a labor condition application (LCA) with the Department of Labor, which can take up to a week to process. This means you cannot wait until late March to start on this. You should contact your immigration counsel now to begin the process as soon as possible. This will give you, the foreign national, and any third parties (such as translators or academic evaluation professionals) time to gather and prepare the necessary information and documents in order to be ready to file the petition on April 1, 2015.

For more information, please contact [Laurie M. Riley](#) and [Mary Ellen B. Jordan](#).

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

Laurie M. Riley

Partner, Jones Walker LLP
201 S Biscayne Blvd
Miami, FL 33131-4341
lriley@joneswalker.com
305.679.5728 tel

Mary Ellen B. Jordan

Special Counsel, Jones Walker LLP
201 St. Charles Ave
New Orleans, LA 70170-5100
mjordan@joneswalker.com
504.582.8706 tel

[Jones Walker Labor & Employment Practice Group](#)
www.joneswalker.com

[Jones Walker Labor & Employment Practice Group](#)
www.joneswalker.com

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