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Options for Hiring Foreign Workers After H-1B Visa Rejection

Publication — 7/29/2014

The U.S. Citizenship and Immigration Services (USCIS) received about 172,500 H-1B petitions this April for the annual allotment of 85,000 H-1B visas (65,000 in the general H-1B category and 20,000 for those with advanced degrees) to be issued this fiscal year. Businesses use the H-1B Visa program to employ foreign citizens to work in the U.S. in highly specialized fields, such as engineering, science and computer programming. When the number of petitions exceed the cap, as they do many years including this year, USCIS uses a random, computer-generated lottery to select the petitions that will be processed. Those petitions not randomly chosen are returned to the submitting employer along with the filing fees.

If you need to hire foreign professionals but your H-1B visa petition was not selected, all is not lost. Numerous alternatives exist that may provide you with the means to hire the specialized foreign workers you need. Consider the following alternative employment visas:

1. **F-1 OPT STEM Extensions.** Science, tech, engineering, and math (STEM) graduates may apply for a 17 month work permit to extend their one year Optional Practical Training (OPT). The graduate must have applied for the 17 month OPT by filing an I-765 Application for Employment Authorization, which typically takes three months to process. You, as the employer, must participate in E-Verify in order for the STEM graduate to be eligible for this extension.
2. **TN Visa.** The TN visa is a three year nonimmigrant visa for Canadian and Mexican citizens and authorizes the individual to work and live temporarily in the U.S. Each TN nonimmigrant worker must demonstrate that he or she will be working in one of sixty TN approved occupations. Occupations include but are not limited to nurses, attorneys, engineers, management consultants, and scientific technicians. Almost all TN positions require a Bachelor's degree except for a Scientific Technician or Management Consultant position. Unlike the H-1B, there is no numerical limitation to the number of TN visas issued.
3. **E-3 Australian Specialty Occupation Visa.** This visa allows Australian citizens to enter the U.S. for a two year period to work in a position that qualifies as a specialty occupation. Specialty occupations are defined as any position which normally requires a Bachelor's degree in a specific major or concentration (i.e. engineer, nurse, scientist, software developers, and accountants). Roles which are solely managerial or sales do not qualify as

specialty occupations. E-3 visas are limited to 10,000 per year.

4. **L-1B Specialized Knowledge Worker Visa.** If the worker is currently outside the U.S. working for a foreign parent or subsidiary company related to a U.S. company and has worked for the foreign company for at least one out of the last three years, he or she may qualify for the L-1B intercompany transfer for specialized knowledge workers. The individual must hold specialized knowledge which is distinguished from knowledge held by others in the company and industry.
5. **Lateral Hire of H-1B Workers.** The H-1B visa cap applies only to new H-1B petitions. Consequently, employers may be able to hire foreign workers who currently hold H-1B visas through other employers. Current H-1B employees typically can extend their visa status for up to six years and in some cases, even longer. In addition, foreign nationals who previously held H-1B status but are not currently employed in the U.S. are exempt from the annual H-1B cap and may be returned to that status for the rest of their six-year H-1B visa period.
6. **Dependent Status.** Individuals whose spouse is in the U.S. under F-1, TN, L-1, H-1B or another nonimmigrant status may choose to change to the correlating dependent status (F-2, TD, L-2, H-4) which will allow them to remain in the U.S. but not to work. To apply for this change of immigration status, the individual must submit an I-539 Application to Change or Extend Status to USCIS. This typically requires a three month processing time.
7. **F-1 Student Status.** Non-U.S. citizens may choose to return to school and change their status to F-1. Depending on his or her degree program, the international student's office may allow the individual to work off-campus part time under Curricular Practical Training. Students should contact their university's international student's office for additional information.

Explore Visa Alternatives To Meet Your Employment Needs

While not an exhaustive list, these are some of the available options that may help you employ the degreed, specialized workers your business needs. If your H-1B petition wasn't selected under the cap, consider whether one or more of these alternatives applies. As always, please feel free to consult us with your immigration and visa questions.