

H-1B: The Visa of Choice for Highly Skilled Foreign Nationals in the Scientific Community

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The H-1B visa, or the visa for highly educated professionals, has long been very popular in the scientific community. Its popularity arises out of its unusual flexibility (being portable and allowing for concurrent employment), as well as the fact that it's a dual-intent visa allowing an employee to more easily apply for Lawful Permanent Residence (a green card).

Over the past few years businesses that use H-1B visas have become quite familiar with the annual cap placed on the visa, and how this cap can close doors to some potentially valuable employees. The annual cap of 65,000 visas for nonimmigrants holding a Bachelor's Degree, and 20,000 for nonimmigrants holding a U.S. Master's Degree, applies to each fiscal year (October 1 to September 30). In a strong economy, this cap has not even come close to meeting the demand.

The government begins to accept petitions for H-1Bs on April 1 for an October 1 start date. In 2008, U.S. Citizenship and Immigration Service (USCIS), received approximately 163,000 petitions on the first five days of the eligible filing period for FY 2009 (April 1–7, 2008). All 163,000 petitions were then subject to a computer-generated random selection process to determine which H-1B petitions would continue to receive full adjudication and be eligible to receive an H-1B visa number, and which would be sent back to the employer unopened. The situation was similar in 2007 and 2006.

Fiscal year 2009, however, has been an aberration. The strained U.S. economy has slowed the demand for H-1B visas. In fact, the H-1B nonimmigrant visas were not used up until December 2009. While this may not be good news

for the U.S. economy, it is good news for individuals who recently obtained a job offer in a professional and specialty occupation late in the year and who need a visa. In the past, late-comers to the job market would have been foreclosed from applying for an H-1B until the following fiscal year.

It is difficult to predict what will be in store for the H-1B visa petition process for the 2010–2011 fiscal year. In fact, it is conceivable that if the economy becomes strong again, the demand for H-1Bs may be dramatically increased. We should not forget that the United States has long been the favored destination of highly-skilled, highly-educated, and talented immigrants. Effective immigration policies formulated by the have attracted and retained talent of the highest ilk from all over the world. As a result, the United States is still considered to be a land of opportunity and the only country that has all the necessary ingredients to lead the world in times of both financial stability and instability. The International Organization for Migration continues to rate the United States and Canada as the countries facing a growing demand for highly skilled temporary workers, and also ranks as major receivers of permanent migrants from throughout the world.

With the demand and popularity of the H-1B poised to increase, it is recommended that prospective H-1B petitioners start identifying potential H-1B candidates [employees who are presently on Optional Practical Training (OPT) or other nonimmigrant visas or whose OPTs or visas are likely to expire later on in the year], and plan workforce needs early in the year to prepare to submit H-1B petitions. The sooner the petitioner starts the H-1B process, the

better the chance that appropriate time can be spent preparing and analyzing a case.

STEM Degrees and OPT Extensions

Realizing the need for retaining highly skilled foreign national workers to meet the United States' growing demand for a skilled temporary workforce, the USCIS now allows F-1 academic students who receive degrees in science-technology-engineering-mathematics (STEM) fields, and who receive an initial grant of 12 months of OPT after graduation, to apply for a 17-month extension (for a maximum of 29 months). The STEM Designated Degree Program List is based on the "Classification of Instructional Programs" developed by the U.S. Department of Education's National Center for Education Statistics.

Eligible STEM degrees include Computer Science Applications, Life Sciences, Actuarial Science, Mathematics, Engineering, Military Technologies, Engineering Technologies, and Physical Sciences. In order to be eligible for the 17-month extension of post-completion OPT, the OPT employee or student must meet the following criteria:

1. The student must have a Bachelor's, Master's or Doctoral degree in a STEM field;
2. The employer must be enrolled in E-Verify;
3. The student must apply on time (at least 90 days before the current post-completion OPT expires).

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