

H-1B Specialty Occupation

Issue: 7th Year and Beyond

When used: When six-year H-1B limit is reached.

One day we received a telephone call from a Human Resources manager who was concerned about whether their company would lose a key employee who was nearing the six-year limit on his H-1B visa. She inquired about transferring him abroad for a year and then bringing him back to the United States to reset the clock, but that was not their preferred strategy. We explained to her that as with most areas of the law, that there were some exceptions and that there may be other strategies to keep this key employee in the United States.

We determined that the employee was in his fifth year of H-1B time and he had not filed a labor certification application. We also determined that in the past five years that he had left the United States for a total of five months. Given that labor certification applications were pending for several years at that time, we advised the company to file an application immediately. This is because once the petition had been on file for more than 365 days, then the H-1B could be extended in one-year increments beyond the six-year limit. (The same is true for persons with an approved I-140.)

The employee had about three months left on his H-1B, so we filed an extension application to recapture the five months abroad. We waited to file this application to take advantage of the automatic 240 day extension of work authorization afforded under 8 CFR §274A.12(b)(20). As such, the labor certification remained pending for three months and then another 240 days (8 months) and then for five months after the extension was approved. So, by the time we filed for a 7th year extension, the labor certification had been pending for sixteen months.

We filed for the seventh year extension once the labor certification had been pending for more than 365 days. We included evidence of the date of filing for the labor certification and demonstrated how he had maintained a lawful status. His seventh year extension was approved and he remained with the company to eventually have an eighth year approved before an I-140 was approved.

For more information about 7th Year H-1B Petitions and Beyond or to have your case reviewed by an attorney for free, please contact our office toll free at (866) 441-8472 or via e-mail at enquiry@leelanesmith.us.