

H-1B Nonimmigrant Status: Specialty Occupations

H-1B is a nonimmigrant classification used to temporarily employ skilled foreign workers in a specialty occupation. A specialty occupation requires the theoretical and practical application of a body of knowledge that is normally associated with the attainment of a bachelor's degree or its functional equivalent. Examples of specialty occupations include, but are not limited to, architects, engineers, doctors, professors, accountants, scientists, computer professionals, and fashion designers. If the prospective worker does not have a degree from a U.S. university, however, it will be necessary to obtain a degree evaluation. If the worker has a master's degree from a U.S. university, a degree evaluation of the foreign bachelor's degree will not be necessary. Finally, if the prospective employee does not possess a bachelor's degree, it will be necessary to have their education and work experience evaluated for a degree equivalency determination. The relevant formula is three years of work experience is equal to one year of college-level education.

Once it is determined that the prospective employee has a bachelor's degree or an equivalent, it will be necessary to demonstrate that the position in fact requires the application of the skills associated with attainment of a bachelor's degree. This can be demonstrated by showing that the nature of the specific job duties are so complex or unique that they can be performed only by an individual with a bachelor's degree, or that the particular employer or the industry normally requires a bachelor's degree for the occupation.

Prior to submitting the H-1B application, the sponsoring company will need to have a Labor Condition Application (LCA) certified by the U.S. Department of Labor. The LCA is essentially an attestation that the employer will pay the prevailing wage to the foreign worker, so that American worker's wages are not undermined. It also certifies that the employer is responsible for return transportation to the employee's last place of residence if the employer terminates employment. This certification normally takes one day to complete and is filed with the H-1B application.

It is advisable to include a statement in support of the application that points out how the application evidences each of the requirements under the statute. Supporting documents normally include a copy of the worker's degree and/or transcript, any necessary state license, copy of biographical page of the worker's passport, and any other documents that an attorney may deem supportive of the particular application. The normal adjudication timeline for such applications is sixty to ninety days, but recently that estimate has been closer to seven months. As an alternative, the Premium Processing service guarantees a determination on the application within fifteen days. The Premium Processing fee is an additional \$1,000 in addition to the \$185 filing fee charged on all H-1B applications. Recently, however, Congress reinstated and increased the training fee associated with the H-1B program. This \$1,500 is to be used to support training programs for U.S. workers. Also, Congress recently added a \$500 fraud prevention fee.

The H-1B status is granted in increments of three years, with a total of six years available. In limited circumstances, it may be possible to obtain an extension beyond the initial six years. Congress, however, has placed a limit or "cap" on the number of new H-1B applications that can be granted each fiscal year. The current limit is 65,000 per year.

Spouses and dependents of the principal H-1B beneficiary are eligible for a derivative status, H-4. An H-4 holder is not eligible to accept employment, but can attend school. Servants or significant

others are not eligible for this derivative status, but may be eligible under other categories.

For more information

For more information or to arrange for a consultation about your particular situation, please contact Lee Lane Smith LLP toll free at (800) 513-5699 or via e-mail at enquiry@leelanesmith.us.