



U.S. Citizenship and Immigration Services

H-1B Specialty Occupation Visa Program

H-1B Visa Program

- The H-1B nonimmigrant classification is for aliens coming to the United States temporarily to perform services:
 - Specialty occupation
 - Department of Defense worker
 - Fashion model

Labor Condition Application (LCA)

- Each petition for an H-1B worker must be accompanied by an LCA in which the DOL certifies:
 - Paid at least the actual or prevailing wage
 - Working conditions will have no adverse effect on U.S. workers
 - No strike or lockout is in progress.
 - The employer has notified the bargaining representative if the job is unionized, or has posted a notice that an LCA was filed.

Numerical Cap

- Statutory numerical limitation of 65,000 per fiscal year except:
 - 20,000 U.S. master's degree or higher
 - Institutions of higher education or related/affiliated nonprofit entities
 - nonprofit research organizations or governmental research organizations
 - Petitions filed prior December 31, 2014 for work only in Guam or the Commonwealth of the Northern Marianas Islands
 - Petitions filed on behalf of current H-1B workers who have been counted previously against the cap

Fiscal Year 2011 Filing Period

- The filing period for Fiscal Year (FY) 2011 began on April 1, 2010.
- On December 22, 2010, USCIS received enough H-1B petitions to reach the cap of 20,000 for beneficiaries who hold a masters degree or higher earned from a U.S. institution of higher education.
- On January 26, 2011, USCIS received enough H-1B petitions to reach the regular cap of 65,000.
- In comparison, between April 1 and April 7, 2009 USCIS received approximately
 - 42,000 cap-subject petitions
 - 20,000 U.S. master's petitions

Recent Developments

- Guidance to the field was issued on January 8, 2010 regarding what factors constitute an “employer-employee” relationship in the H-1B context.
- Administrative Site Visit Verification Program (ASVVP)

Guidance to the Field

- Employer-Employee Memo on January 8, 2010
 - A valid employer-employee relationship must exist for the duration of the requested H-1B validity period.
 - The memo provided guidance to adjudicators on how to determine whether a valid employer-employee relationship will exist between the petitioner and beneficiary, especially in third party employment situations.

ASVVP

- Utilizes physical on-site inspections to determine
 - Existence of employment location
 - If a beneficiary according to the petition is
 - Employed at the location specified
 - Performing the duties as described
 - Paid the salary as indicated
- Initial findings
 - 15,175 H-1B site inspections in FY10
 - Initial results indicate fraud and noncompliance rates of 13%