H-1B Visas

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H-1B Classification for Specialty Occupation Workers

H-1B

- Specialty occupation workers;
- Department of Defense (DOD) cooperative research and development project or co-production project workers; and
- Fashion models of distinguished merit and ability.

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H-1B Classification for Specialty Occupation Workers

H-1B1

- Pursuant to free trade agreements, specialty occupation workers that are nationals of Chile and Singapore
- A Form I-129 is not required to be filed with USCIS
  - Individuals may apply for an H-1B1 visa directly at a consular office overseas.
  - However, employers may file Form I-129 with USCIS to request an extension of the H-1B1 beneficiary's status, or to request a change of the beneficiary's status to H-1B1, within the United States.

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H-1B Classification Criteria

- Petitioner is a U.S. employer or U.S. agent;
- Position qualifies as a specialty occupation; and
- Beneficiary is qualified to perform the specialty occupation position, including any state licensure requirement.

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Specialty Occupation

- "Specialty occupation" is broadly defined as an occupation which requires the "theoretical and practical application of a body of highly specialized knowledge."
- To qualify as a specialty occupation, the position must meet one of the following criteria:
  - A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

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Specialty Occupation

- The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- The employer normally requires a degree or its equivalent for the position; or
- The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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General H-1B Classification Information

- The annual H-1B cap is set at 65,000.
  - The first 20,000 H-1B petitions filed on behalf of beneficiaries with a U.S. Master's or higher degree are exempt from the annual cap.
  - Petitions by, or for employment at, certain organizations are not counted against the cap (e.g. institutions of higher education and related/affiliated non-profit entities).
  - Certain exemptions and exceptions that apply to the beneficiary might also render the petition cap-exempt.

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General H-1B Classification Information

- While in H-1B status, the nonimmigrant may also seek permanent residence in the United States.
- Labor Conditional Application is required for specialty occupation and fashion model H-1B petitions.
- Maximum stay of 6 years, with limited exceptions*

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H-1B Petition Process

- Petitioner files a Labor Condition Application (LCA) with Department of Labor (DOL) for certification.
- The LCA contains several attestations by the petitioner, including:
  - ✓ The foreign worker will be paid the prevailing wage or the actual wage, whichever is higher.
  - ✓ Employment of the foreign worker will not adversely affect U.S. workers.

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H-1B Petition Process

- Once DOL certifies the LCA, the petitioner submits Form I-129 with a certified LCA to a USCIS Service Center.
- If USCIS approves the petition for a beneficiary who is outside the United States and requires a visa to enter the United States, the beneficiary will need to schedule a visa interview at a U.S. Embassy or Consulate abroad.
  - ✓If issued an H-1B visa, the beneficiary may apply for admission to the United States with CBP.

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H-1B Petition Process

- If the beneficiary does not require a visa to enter the United States, he/she may apply for admission into the United States with CBP using the USCIS approval notice. This beneficiary can therefore obtain H-1B admission without prior contact or interaction with DOS.

- If the beneficiary is in the United States (in valid nonimmigrant status), the petitioner may include a request to change the beneficiary's status to H-1B or extend H-1B beneficiary's stay on the Form I-129.

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Filing Procedures

Form I-129, Petition for a Nonimmigrant Worker

- Completed and properly signed forms
  - Original signatures
  - Completed/properly signed H Classification Supplement to Form I-129
  - Premium processing fee & form (Form I-907), if applicable
  - Corresponding Labor Condition Application that has been signed by DOL and signed by the petitioner
- Appropriate fees
- Petition is mailed to the California Service Center or to the Vermont Service Center, consistent with filing jurisdictions (found on http://www.uscis.gov/i-129-addresses)

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AC21 Final Rule

Among other things, DHS is amending its regulations to:

• Clarify and improve longstanding DHS policies and practices implementing sections of the American Competitiveness in the Twenty-First Century Act and the American Competitiveness and Workforce Improvement Act related to certain foreign workers, which will enhance USCIS' consistency in adjudication.

• Better enable U.S. employers to employ and retain high-skilled workers who are beneficiaries of approved employment-based immigrant visa petitions (Form I-140 petitions) while also providing stability and job flexibility to these workers. The rule increases the

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AC21 Final Rule

- Better enable U.S. employers to employ and retain high-skilled workers who are beneficiaries of approved employment-based immigrant visa petitions (Form I-140 petitions) while also providing stability and job flexibility to these workers. The rule increases the ability of these workers to further their careers by accepting promotions, changing positions with current employers, changing employers and pursuing other employment opportunities.

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AC21 Final Rule

- Improve job portability for certain beneficiaries of approved Form I-140 petitions by maintaining a petition's validity under certain circumstances despite an employer's withdrawal of the approved petition or the termination of the employer's business.

- Clarify and expand when individuals may keep their priority date when applying for adjustment of status to lawful permanent residence.

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AC21 Final Rule

• Allow certain high-skilled individuals in the United States with E-3, H-1B, H-1B1, L-1 or O-1 nonimmigrant status, including any applicable grace period, to apply for employment authorization for a limited period if:

1. They are the principal beneficiaries of an approved Form I-140 petition,
2. An immigrant visa is not authorized for issuance for their priority date, and
3. They can demonstrate compelling circumstances exist that justify DHS issuing an employment authorization document in its discretion.

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Such employment authorization may only be renewed in limited circumstances and only in one year increments.

• Clarify various policies and procedures related to the adjudication of H-1B petitions, including, among other things, providing H-1B status beyond the six year authorized period of admission, determining cap exemptions and counting workers under the H-1B cap, H-1B portability, licensure requirements and protections for whistleblowers.

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- Establish two grace periods of up to 10 days for individuals in the E-1, E-2, E-3, L-1, and TN nonimmigrant classifications to provide a reasonable amount of time for these individuals to prepare to begin employment in the country and to depart the United States or take other actions to extend, change, or otherwise maintain lawful status.

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- Establish a grace period of up to 60 consecutive days during each authorized validity period for certain high-skilled nonimmigrant workers when their employment ends before the end of their authorized validity period, so they may more readily pursue new employment and an extension of their nonimmigrant status.

- Automatically extend the employment authorization and validity of Employment Authorization Documents (EADs or Form I-766s) for certain individuals who apply on time to renew their EADs.

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- Eliminate the regulatory provision that requires USCIS to adjudicate the Form I-765, Application for Employment Authorization, within 90 days of filing and that authorizes interim EADs in cases where such adjudications are not conducted within the 90-day timeframe.

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