



Hiring Information for International Students

414.288.7423 ■ career.services@marquette.edu ■ www.marquette.edu/csc ■ Holthusen Hall, 1st floor

- Congress has approved 12 months of legal employment (Optional Practical Training-OPT) for F-1 (nonimmigrant students) for EACH degree program
 - The Immigration Reform and Control Act of 1986 (IRCA86) dictated the Form I-9 requiring employers to view original documentation presented by all new hires to verify both identity and the legal right to work in the U.S.
- The nonimmigrant classification of Specialty Occupation Worker-H1B was created to fill a need for highly trained workers and the void of U.S. workers available
- Many H-1Bs are hired from abroad, but the H-1B also serves as a continuation category from the OPT student F-1 status to a temporary professional classification.
- Number of H-1Bs allowed began in 1986 at 65,000 and swelled to 201,179 in 2001. Now the present number has been reduced to 65,000. (In 2005 Congress has authorized 20,000 additional H-1Bs for advanced degree candidates of U.S. Universities)
- If employer WANTS TO KEEP an F-1 student beyond OPT:
 - Employer must file petition with one of four regional centers of USCIS (U.S. Citizenship and Immigration Services, part of the Dept. of Homeland Security.)

(“The employer determines the duties, sets the minimum job qualifications, determines the wages, and decides on the conditions of the job. The employer signatory certifies under various laws that procedures have been followed and that regulations will be met.”)

USCIS Officer reviews and adjudicates the petition

- a) approve the employment authorization
- b) grant the “alien” a change of status from student to the H-1B category
- c) issue a request for additional information or evidence
- d) deny the petition.

“If the job offered meets the required criteria and the beneficiary employee holds the matching required education and/or experience to meet the conditions, the USCIS may approve H-1B employment.”

The degree may be from a previous program--earned in the U.S. or abroad.

- There are ways to MAXIMIZE chances
 - a) careful and detailed preparation
 - b) following up-to-date filing procedures which are often not specified in the instructions
 - c) showing evidence that job duties do, in fact, require at least a specific type of bachelor’s degree
 - d) providing documentation of the beneficiary’s continuous legal presence in the U.S. including valid employment authorization for any and all employment.

- Timeline for Filing for H-1B Visas

The CIS is permitted to issue 65,000 H-1B visas each fiscal year (October 1 – September 30). For the 2005 fiscal year (October 1, 2004 – September 30, 2005), CIS ran out of H-1B visas on October 1, 2004, the first day they became available. They ran out because companies can file H-1B visas with an October 1 start date up to 6 months in advance. In other words, companies could be filing April 1, 2004 for October 1, 2004 start dates. Between April 1 and October 1, 2004, all 65,000 H-1B's were taken for the 2005 fiscal year. **An applicant is counted when they FILE for an H-1B.**

That means no new H-1B availability until October 1, 2005 (the start of the 2006 fiscal year). For F-1 students graduating in December or May of 2005, it is essential that they obtain their Optional Practical Training (OPT work cards, so that after graduation they can work until the new H-1B visas become available on October 1.) The McCandlish Holton Immigration Attorneys advise that students should use the OPT to get their foot in the door with an employer and begin working. However, they should file for the H-1B as soon as possible. It is likely that CIS will run out of H-1B visas again by the time the new 2006 fiscal year starts on October 1, 2005.

Because of the outcry from businesses and universities over exhaustion of the H-1B cap, Congress authorized 20,000 additional H-1Bs for the 2005 fiscal year, reserved specifically for advanced degree graduates of US universities. CIS began accepting petitions for this new allocation on May 12, 2005.

- If approved, H-1B temporary allows three years of employment renewable for three more (Up to six years) Does NOT provide a basis for long-term or permanent employment.
- Why companies may not consider hiring H-1Bs
 - corporate policy exists which precludes consideration of foreign nationals. (many organizations preclude it for many misconceived ideas and misunderstandings)
 - however, IRCA86 allows an employer to choose not to hire aliens who do not have a right to work permanently in the U.S.
- Not every job qualifies for the H-1B category, even if employment is already underway
- Cost:
 - CIS' normal filing fee for private employers as of 2005 is **\$185, plus a \$1500 "training fee," plus a "fraud prevention" fee of \$500.** (Note: University employers, primary/secondary schools and certain nonprofit organizations do not pay "training fee." Employers with 25 or fewer employees pay only at \$750 "training fee.") **Premium processing (15 day processing) carries an additional \$1,000 filing fee to CIS.**
- H-B Cap:
 - CIS issues 65,000 new H-1B approvals each year (CIS year – October 1 through September 30) Exceptions to the cap: University jobs; H-1B extension with same employer; H-1B transfer to new employer; positions in specific types of teaching medical facilities, and positions in some nonprofit organizations." Graduates with U.S. advanced degrees have special allocation of 20,000 H-1Bs above the 65,000)
- Companies have a large responsibility to remain alert to the legal issues and changes

- For H-1Bs, companies DO NOT have to prove that the chosen candidate is the only person capable of performing the job. (This is necessary for the green card.)
 - By careful planning, an H-1B status person can be working under that authorization while process underway for permanent residency (green card).
- USCIS has websites that are helpful when trying to obtain an H-1B
- Some companies that continuously hire H-1B have staff experts to handle the paperwork.
- American Competitiveness Act of 2001 – Portability
 - because it can take two to six months to adjudicate a petition, when specific conditions are met, an employer MAY be able to activate a new hire with a new H-1B petition on file, but before obtaining an approval from USCIS. (Congress recognized that employers seeking highly qualified workers generally have immediate hire requirements and need the worker as soon as possible.)
 - beneficiary must have been in H-1B status prior to the new employer’s filing
 - “there are some tricky specifics as to the eligibility of the beneficiary and nuances for completing the new hire’s paperwork.”*
 - Employers finding this very helpful in filling their staffing shortages
- Does an employer need an attorney to file an H-1B visa petition on behalf of the beneficiary.
 - Answer: Do you need a tax preparer or accountant to file your complicated IRS Form 1040 with Schedules, A-Z, capital gains, and questionable deduction?
- Optional Practical Training (OPT)

For graduates in F-1 student visa status. Optional Practical Training allows up to twelve month of employment after graduation. The student must obtain permission from the university foreign student advisor, and a work authorization card from the CIS (formerly INS). Some students (on J visas) may even be eligible for up to 18 months of training without even getting a work authorization card from CIS. The university can provide additional information.

Timing: Graduate can begin working immediately upon receipt of the work authorization card.

Cost: No cost to employer. Student pays \$175 filing fee to CIS to get card.

Employer Obligations: Treat employees on practical training just like other U.S. employees in terms of pay, discipline, termination, etc.

- New Permanent Resident Processing

In addition to changes to H-1B processing, the Department of Labor has implemented a new procedure for processing permanent resident green cards using “labor certifications.” The green card process has three stages:

1. Labor certification, filed with the Department of Labor
2. I-140 petition filed with the CIS; and
3. 1485 adjustment of status filed with the CIS.

Labor certification requires that the employer advertise to see if there is a qualified US worker available for the job. Under prior processing procedures, the Department of Labor was taking in excess of three years for just the labor certification process. Because of the extreme backlogs, the Department of Labor has implemented a new filing procedure called PERM. The PERM process involves electronic filing of labor certification applications, and is designed to reduce processing 45-60 days. There are very specific advertisement requirements and document retention requirements now mandated for employers engaging in the labor certification process. The PERM system was commenced on March 28, 2005. The system is not yet running smoothly and probably will not for some time to come. Cases filed pre-PERM continue to be processed at the new Backlog Reduction Centers.

**Summarized from Legal Q & A by Susan Snider Salmon (2004)
(from)Keys to Success: Employing Foreign Nationals with updated
information from McCandlish Holton Immigration Practice Group, June 2005*

McCandlish Holton Immigration Practice Group – Immigration attorneys: Mark Rhoads (mrhoads@lawmh.com) 804-775-3824; Helen L. Konrad (hkonrad@lawmh.com) 804-775-3825; Jennifer Minear (jminear@lawmh.com) 804-775-3822. 111 East Main St., Ste 1500, Richmond, VA 23219; Fax 804-249-9595