

IMMIGRATION NEWS

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NOTE: This newsletter is meant for your information. The contents may not be used as legal advice or relied upon as legal advice. The INS and DOL have complex and confusing rules. It is advisable to consult with an Immigration specialist to determine how the rules apply to your particular case.

NEW H-1B LAW

How it affects you

The new H-1B law affects the employer and employee in similar ways. The H-1B employee is affected by the law because the law defines more closely how the employer must hire, pay, and treat the H-1B employee in much the same way as the employer treats the U.S. worker. The employer is greatly affected by the increase in the H-1B "cap" from 65,000 per year to 115,000 in 1999 & 2000. In 2001, the "cap" will be 107,500, and in 2001, it will go back to 65,000. The cost of filing the H-1B Petition has increased with the increased INS Filing Fee (\$110) and the tuition filing fee (\$500) for a total of \$610 in filing fees for each H-1B that is new, the first extension, or a change of employer. The funds raised by the \$500 fee are to be used for training programs and scholarships for U.S. workers. The fee will be in effect for the next three years.

Employers must attest that they have made a "good faith" effort to recruit qualified U.S. workers before hiring the H-1B worker. Employers may not "lay off" a U.S. worker and replace with an H-1B worker. A U.S. worker is defined as a U.S. citizen, a permanent resident, a refugee, or an immigrant otherwise authorized to be employed.

Processing times

We receive a lot of questions asking "how long will it take ...". It is very difficult to answer these questions because the processing times change often and they are different in different parts of the USA. At this time, the processing times in the Northeastern US are:

VERMONT INS

H1-B:	30-60 days
I-140 Immigrant Petitions:	60-180 days
Spouse H-4:	30-60 days
Adjustment I-485:	120-180 days

H-1B Six Year Limit

Options available if you are reaching the six-year limit on your H-1B visa:

1. leave the USA for one year and return on an H visa,
2. leave the USA when your H expires until your Priority Date for Green Card has been reached and adjust abroad;
3. change to an F-1 student visa;
4. count up the exact amount of time you have used on the H visa to determine whether you may have some days or months to spare. Time spent outside the USA does not count toward your six years on the H visa and may provide some extra cushion.
5. For those people in the early years of an H visa, apply early for your Green Card so you don't get "caught" in the backlog.

NATIONAL INTEREST WAIVERS

A National Interest Waiver bypasses the entire Labor Certification process. The NIW was strongly defined recently in a court case called In re New York State Department of Transportation. The court decision established that a successful Waiver requires: (1) activities that have substantial intrinsic merit; (2) are national in scope; and (3) serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The decision stated that it is not sufficient to simply list the employee's qualifications because there may be an available U.S. worker with the same qualifications. Secondly, if the position can be filled by a competent and available U.S. worker, then the Waiver will fail even if the Petitioner is in a position which will benefit the United States. This decision has chilled the opportunity to obtain a National Interest Waiver.

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For an accurate Education Credentials Analysis, email eve@calderonlaw.com