

IMMIGRATION NEWS

Volume 3, Issue 1 Calderon Law Firm news@calderonlaw.com

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GREEN CARDS

The Green Card process with an employer sponsor is a 3-step process:

First Step: Labor Certification

The Labor Certification is filed with the Department of Labor and may take up to a year depending upon the state and location where you file it. It may be filed as a "regular" or "RIR" which is a fast track filing. In the Maryland, VA, DC and PA area, the Labor Certifications take about 2-3 months for an approval.

Second Step: Immigrant Petition

The I-140 Immigrant Petition is filed with INS and takes from 6-8 months for an approval.

Third Step: Adjustment

You may choose to adjust in the USA or with Consular Processing.

Employment-based Timetables

	China	India
2 nd Preference	current	current
3 rd Preference	1 Jan 00	1 July 98

H-1B UPDATE

New H-1B Law : American Competitiveness Act in the 21st Century (AC21)

Some important features of this new law:

1. Changing Employers: If you already have an H-1B and are changing jobs and employers, you may work for the new employer as soon as the H-1B petition is filed and INS has issued a receipt (proof of filing).
2. Increase in H-1B petitions from 65,000 per year to 195,000 per year (for 2001-2003), however INS has not been given a budget to hire additional employees.
3. H-1B employees hired by institutions of higher education or non profit research organizations will not be counted toward the "cap".
4. the H-1B may be extended beyond the six-year limit if a Labor Certification or Immigrant Petition has been pending for 180 days.

H-1B PROCESSING TIMES

VERMONT SERVICE CENTER: **HOTLINE: (802)527-4913**

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NEBRASKA SERVICE CENTER: **HOTLINE: (402)323-7830**

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TEXAS SERVICE CENTER: **HOTLINE: (214)381-1423**

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CALIFORNIA SERVICE CENTER: **HOTLINE: (949)831-8427**

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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.

Types of Visas

F-1 Student visas: when an F-1 student applies for a position with a company, they may (or may not) have a Work Permit. When a position is offered to the F-1 student, the interviewer may ask the student whether he/she has a valid Work Permit, and a copy of the Work Permit should be filed with the I-9 upon hire. On the Work Permit is an Expiration Date. It is critical to look at the expiration date and note it on the I-9 because when the Work Permit expires, the holder may no longer work unless the employer has filed for an H-1B.

Canadian TN visa: when a Canadian citizen applies for a job in the United States, he/she may enter on a TN visa if the job title is on NAFTA Schedule 2. This is a one-year indefinitely renewable visa.

L-1 visa: when a company has offices outside the United States and has employees working in those offices that need to be transferred to the US office, then an L-1 visa may be appropriate. This is a particularly useful visa for the company owner/executive who does not have a University degree and may not be eligible for an H-1B. The L-1 visa may be granted for 1-3 years.

EMPLOYER'S CORNER

I-9s

Be sure to attach the H-1B Transfer's receipt to the I-9 until the actual H approval is received. If you need assistance with the I-9 procedure, call my office at (202)518-7855.

H-1B Dependency

The Department of Labor wants to know if you are an H-1B Dependent employer? The DOL has provided a formula to calculate your dependency status:

Less than 25 employees: 7 H-1Bs
Between 26-50 employees: 12 H-1Bs
More than 50 employees: 15% of staff

Exempt H-1Bs: if the H-1B has a Master's degree in a specialty related to the employment or who earn wages of \$60K or more. However, please note that the calculation for a dependent employer includes the exempt H-1Bs....

What is the employer's responsibility in a layoff?

The H-1B employer is required to pay the H-1B employee's air fare to his country if the company lays off the employee. The law provides from 10-30 days for the employee to find another job or leave the USA if he is laid off.

Employers may want to consider giving their laid-off H-1B workers a "travel packet" consisting of: (1) a letter explaining the corporate restructuring & layoffs; (2) the portability option of the H-1B; and (3) the employer's willingness to pay the return airfare to the H-1B's home destination within 30 days after layoff if the H-1B worker cannot find another position.

COMING SOON: INS is writing the regulations for a FAST TRACK H-1B that will be processed in fifteen (15) days and cost an additional \$1000

For an accurate Education Credentials Evaluation, email: eliz@calderonlaw.com