

US Immigration: H-1B Filing Season and Recent Developments in Visa Processing

H-1B Visa Filings for FY 2013 Begin on April 2, 2012

On April 2, 2012 US Citizenship and Immigration Services (USCIS) will begin accepting filings of H-1B visa petitions for employment in the fiscal year 2013 (FY 2013). Employers should prepare to start filing H-1B petitions on April 2, 2012, for new and existing employees who will be eligible for a first-time H-1B visa to begin employment in FY 2013 (that is, on or after October 1, 2012).

Congress has mandated an annual cap of 65,000 H-1B visas, with an additional 20,000 visas available for beneficiaries with advanced degrees from US colleges or universities. It should be noted that H-1B visa petitions filed on behalf of current workers who have been counted previously against the H-1B visa cap will not be included toward the annual cap set by Congress. Furthermore, pursuant to the free trade agreements with Chile and Singapore, 6,800 H-1B visas are available exclusively to Chile and Singapore nationals. This effectively reduces the total allotment of available H-1B visas to 58,200.

As a reminder, the interim final rule issued in 2008 remains in effect and provides “cap-gap” relief for F-1 students with pending H-1B petitions. Specifically, F-1 student visa holders who have received work authorization, pursuant to Optional Practical Training (OPT), may extend their authorized period of stay and work authorization as long as they are a beneficiary of a timely-filed H-1B petition that was granted by, or is pending with, USCIS prior to the expiration of their OPT.

Due to a recovering economy, the FY 2012 year allotment went quicker than the FY 2011 allotment and lasted until November 22, 2011. However, in years past the 58,200 allotment has been exhausted within a day, as has the allotment of 20,000 visas for beneficiaries with advanced degrees from US universities. Demand will likely be greater this year than last year for H-1B visas, so employers are encouraged to file on April 2, 2012, or soon thereafter, if they plan to employ foreign workers in the H-1B category.

New Nonimmigrant Visa Interview Waiver Pilot Program and L-1 Visa Processing

Spawning from a recent executive order issued by President Obama “to improve visa and foreign visitor processing . . . and spur economic growth,” the State Department has established the Nonimmigrant Visa Interview Waiver Pilot Program, under which certain foreign visitors who were interviewed in conjunction with a prior visa application at a US Embassy or Consulate may be able to renew their visas without undergoing another interview. Another stated aim of the President's initiative was to set a worldwide goal to interview 80 percent of all visa applicants within three weeks of the request for an appointment. Just in the last few weeks we have seen dramatic reductions in visa processing times at posts with traditionally long waits, such as China and Brazil.

Generally, all visa applicants must be interviewed unless they meet one of the following criteria:

1. The applicant is younger than 14 years of age or older than 79 years of age;
2. The applicant is applying for a diplomatic visa (generally “A” or “G”); or
3. The applicant is applying for a visa in the same classification as their prior nonimmigrant visa, not more than 12 months after the previous visa expired, at the post of their normal residence. (This is available only for applicants from whom a 10-print fingerprint scan was collected.).



Under the new Pilot Program, consular officers are permitted to waive nonimmigrant interviews for certain visa applicants who are renewing their visas more than 12 months, but less than 48 months from the expiration of the previous visa, and within the same classification as the previous visa. At the present, the Pilot Program will be limited to certain classes of visas. Thus far, we have seen Consulates institute the program for the following types of visas: B (temporary visitors for business/pleasure), C1 (transit), D (crewmembers), F (students), J (exchange visitors), M (nonacademic students) and O (visitors with extraordinary ability).

On a related note, the State Department recently promulgated a rule which permits embassies and consulates to issue L-1 visas with validity dates of up to five years, depending on the maximum period allowed for their country of citizenship per negotiated reciprocity schedules. Previously, L-1 visas could only be issued in conformity with an approved L-1 visa petition or L-1 Blanket application – a maximum of two or three years. The new rule means that some visa applicants may not need to undergo the visa renewal process at an embassy or consulate, even if they later extend their stay in the US. This rule does not increase the time that an L-1 nonimmigrant can stay in the United States, which is three years for an initial entry and two years after a renewal.

For more information regarding any topic in this publication or immigration developments in general, please contact your principal Squire Sanders lawyer or one of the individuals listed below.

Contact

Gregory A. Wald
T +1 415 393 9828
T +1 305 577 7016
gregory.wald@squiresanders.com

Rebekah J. Poston
T +1 305 577 7022
rebekah.poston@squiresanders.com

Brian E. Schield
T +1 213 689 5109
brian.schild@squiresanders.com

© Squire, Sanders (US) LLP

All Rights Reserved

March 2012