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## H-1B Visa Season (and Employment Authorization for Certain H-4 Spouses) is Here!

H-1B visa season is upon us, and Wiggin and Dana would like to encourage employers subject to the annual visa quota (or cap) to evaluate potential employee candidates as soon as possible. The demand for H-1B visas remains high, and the yearly cap for new H-1B visas is still 65,000.

### THE H-1B VISA CATEGORY

The H-1B visa category is for individuals serving in a "specialty occupation" requiring a bachelor's degree or foreign equivalent. Accompanying family members are entitled to derivative H-4 visa classification. The visa status may be obtained for a maximum period of six cumulative years actually spent in the U.S.

H-1B visa petitions include a Labor Condition Application ("LCA"), in which the employer attests to complying with wage, benefits, notice, and record keeping requirements. Employers must obtain an approved LCA from the U.S. Department of Labor *before* submitting an H-1B petition.

By law, H-1B fees must be paid by the employer. These include a base fee of \$325, a fraud prevention and detection fee of \$500, and, unless exempt, a supplemental fee of \$1,500 for employers with more than 25 full-time employees or \$750 for those with 24 or less employees.

### THE 2015 H-1B VISA QUOTA SEASON

The U.S. Citizenship and Immigration Services ("USCIS") will begin accepting quota-subject H-1B petitions for the upcoming fiscal year beginning on October 1 (the earliest start date for new H-1B employment) on Wednesday, April 1, 2015 (six months in advance). USCIS must accept H-1B cap-subject petitions during the first five business days in April. If the cap is reached or exceeded during this time, as it was in April 2014, then no additional cases can be filed toward the cap until April 1, 2016. Further, USCIS will conduct a random lottery to select which cases will be processed toward the quota, and all other cases will be rejected. If the H-1B cap is not met in the first five days of April, then USCIS will accept cases until the quota is filled.

There are a number of exceptions to the annual H-1B cap, including petitions by or on behalf of: institutions of higher education or affiliated nonprofit entities; nonprofit or governmental research organizations; certain employees counted against the cap during the past six years, and those already in H-1B status who are applying for an extension, amendment, or change of employer; and the first 20,000 employees who have earned a U.S. master's degree or higher.

Although H-1B petitions will not be accepted by USCIS until April 1, it is important to

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begin preparing petitions in advance. There are a number of preliminary steps and record-keeping requirements to complete before the H-1B petition is finalized (this is especially true for employers that are start-ups, new entities, or are sponsoring H-1B petitions for the first-time).

### BREAKING NEWS: CERTAIN H-4 SPOUSES ELIGIBLE FOR EMPLOYMENT AUTHORIZATION

On February 24, 2015, USCIS announced that **effective May 26, 2015**, it will extend eligibility to apply for an Employment Authorization Document ("EAD") to certain H-4 dependent spouses of H-1B workers who are seeking employment-based permanent residence (green cards). The provision applies to H-4 spouses of an H-1B worker who is the principal beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker. The provision also applies to H-4 spouses if a PERM labor certification

was filed on the H-1B worker's behalf prior to the fifth year H-1B anniversary date, and she/he has been permitted to work and remain in the U.S. beyond the six-year limit on H-1B status.

In order to obtain an EAD, eligible H-4 dependent spouses must submit to USCIS Form I-765, Application for Employment Authorization, with supporting evidence and the required \$380 fee. Once USCIS approves the I-765 application and the H-4 dependent spouse receives the EAD, she/he will be able to commence employment in the U.S.

The complete press release from USCIS can be found by clicking [here](#).

Please contact Najia Khalid at 203.498.4314 or [nkhalid@wiggin.com](mailto:nkhalid@wiggin.com) if you have any questions.

*This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.*