

The Cap Is Getting Close For H2B Visas

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Dallas, March 12th, 2010-This week the government released the latest count for the H2B, and we are at 58,845. The H-2B, states immigration lawyer Steven Riznyk (www.my-Immigration-Attorney.com) is a wonderful visa that allows employers with peak load, seasonal, and intermittent needs to hire temporary foreign workers to help them through. The H-2B does not have a degree requirement as contrasted to the H1b, so there is no shortage of persons available for the type of work that requires this assistance.

The only drawback to the H-2B, states Steven Riznyk, is that it requires the position to be advertised, which adds to the cost, sometimes substantially. Although this adds to the cost of the case, it is still a less expensive case than the H-1B that has filing fees of \$1570 or \$2320. In addition, with the H1B, employers often pay the \$1000 Premium Processing fee in order to receive a rapid response. There is a blanket petition available as long as the multiple workers (called beneficiaries) conduct the same type of work on the same basis and in the same occupation and locale. Unlike the H1B's specific rules, the employee can pay for the legal and filing fees of the case. If an employer terminates an employee, though, that employer must provide transportation to return the person to their home country and notify the USCIS. If an employer does not meet the conditions of the H2B or willfully misrepresents a material fact, he or she could face a \$10,000 fine per violation, as well as be closed out of the petition process for 1-5 year term.

Workers who typically apply for the H-2B are in construction, health care, hospitality, food service, and farming. The H2B can also be used for performers as well as the technical and support personnel involved with the performance.

The H-2B can be filed up to 6 months before the need for the help arises; with most positions beginning in October and April. The first step is to obtain Labor Certification and that is where the advertising requirement enters into the picture. The DOL (Department of Labor) deals with this aspect before you can even apply for the visa. They do not allow you to obtain certification more than 120 days before you have the need.

An annual allotment of 66,000 visas is available and the SOS (Save our Small and Seasonal Businesses) Act of 2005 split it into two periods, 33,000 visas on October 1st and 33,000 visas on April 1st. The case has to be advertised in a local newspaper for 3 consecutive days (one day must be on a Sunday) and it is placed in an SWA (State Workforce Agency) job bank for 10 days. Renewals of the H2B visa are not counted towards the annual cap, nor are spouses and children. In accordance with the cap, no more than 33,000 can be issued in the first 6 months. The reason for this was in the past, winter employees had an advantage, which then impacted the availability of visas for summer workers.

In order to win an H-2B case, the employer must demonstrate a temporary need to the position. It could be a peak-load, seasonal, one-time, or intermittent need. Normally, the visa is issued for one year, but it can be renewed up to two more times, for a total of three years. However, if a visa is renewed, a new labor certificate is required. The numbers are counting down and if you are seeking an H2B, pay attention to the countdown!

Immigration law has many challenges for both the public and immigration lawyers alike. Part of the challenge is that people don't understand immigration law, as it is so complex. As a result, both officers and lawyers alike are faced with a public that is scared by a system they don't understand. Coincidentally, Steven Riznyk spent a year and a half creating the first DVD that explains US Immigration law to the world in simple language, and it can be found at www.US-Immigration-Explained.com. If you would like to reach Steven Riznyk, his web site is www.my-Immigration-Attorney.com, where you will find plenty of immigration information, as well as his immigration and business blogs; his business blog brings you into the world of running a company branch in Europe. His email is sr@USAexplained.com.

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