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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - MAY 06, 2024

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Headlines:

USCIS Reports Statistics on Employers and Beneficiaries for FY 2025 H-1B Cap Initial Registration – Following up on U.S. Citizenship and Immigration Services' (USCIS) previous announcement that it had received enough electronic registrations for unique beneficiaries during the initial registration period to reach the fiscal year 2025 H-1B numerical allocations (H-1B cap), including the advanced degree exemption (master's cap), USCIS reported several statistics in an email blast.

USCIS Reminds Certain Employment-Based Petitioners to Submit Correct Fees – A new added FAQ asks, ***How can I make sure that my filing is not rejected at intake for incorrect fees?*** **U.S. Citizenship and Immigration Services' response emphasizes the differences between "small employer" and "nonprofit" status and includes examples with details.**

CBP Issues 30-Day Request for Comments on Arrival/Departure Record and Electronic System for Travel Authorization – Comments are due by May 30, 2024.

ABIL Global: Switzerland – There have been developments toward easier access to the Swiss labor market for certain professions.

Details:

USCIS Reports Statistics on Employers and Beneficiaries for FY 2025 H-1B Cap Initial Registration

Following up on U.S. Citizenship and Immigration Services' (USCIS) previous announcement that it had received enough electronic registrations for unique

beneficiaries during the initial registration period to reach the fiscal year (FY) 2025 H-1B numerical allocations (H-1B cap), including the advanced degree exemption (master's cap), USCIS reported several statistics in an email blast:

- The agency "selected 114,017 beneficiaries, resulting in 120,603 selected registrations in the initial selection for the FY 2025 H-1B cap."
- During the registration period for the FY 2025 H-1B cap, the agency "saw a significant decrease in the total number of registrations submitted compared to FY 2024, including a decrease in the number of registrations submitted on behalf of beneficiaries with multiple registrations."
- The number of unique beneficiaries this year for FY 2025 (approximately 442,000) was comparable to the number last year for FY 2024 (approximately 446,000). The number of unique employers this year for FY 2025 (approximately 52,700) was also comparable to the number last year for FY 2024 (approximately 52,000), USCIS said.

USCIS has notified all prospective petitioners with selected beneficiaries that they are eligible to file H-1B cap-subject petitions for those beneficiaries.

Details:

- USCIS alert (Apr. 1, 2024). See also FY 2025 H-1B Cap Registration Process Update (scroll down).

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USCIS Reminds Certain Employment-Based Petitioners to Submit Correct Fees

U.S. Citizenship and Immigration Services (USCIS) announced on April 29, 2024, that it has updated its Frequently Asked Questions on the USCIS Fee Rule "to help certain employment-based petitioners understand how to submit the correct required fees."

A new added FAQ asks, ***How can I make sure that my filing is not rejected at intake for incorrect fees?*** **USCIS's response emphasizes the differences between "small employer" and "nonprofit" status and includes examples with details on how USCIS determines the required fees based on the various types of petitions and the employer's responses to questions in the petition, and how employers should answer the questions and calculate the fees.**

For example, for Form I-129, Petition for a Nonimmigrant Worker, USCIS provides several tips, including:

Part 5, Question 14 asks for your "Current Number of Employees in the United States." If you check "Yes" to Part 5, Question 15, and you answer Question 14 with a number greater than 25, then your supporting documentation should demonstrate how you calculated the number of full-time equivalent employees as 25 or fewer. If we cannot determine the number of full-time equivalent employees, we may reject your petition.

Details:

- USCIS alert (Apr. 29, 2024).

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CBP Issues 30-Day Request for Comments on Arrival/Departure Record and Electronic System for Travel Authorization

U.S. Customs and Border Protection (CBP) seeks comments on the Arrival/Departure Record (Form I-94) and the Electronic System for Travel Authorization (ESTA).

Comments are due by May 30, 2024, using the method described in the notice, which also provides contact information for those seeking additional information.

Details:

- CBP notice, 89 Fed. Reg. 34262 (Apr. 30, 2024).

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ABIL Global: Switzerland

There have been developments toward easier access to the Swiss labor market for certain professions.

Efforts to provide easier access to the Swiss labor market for certain professions include the default for non-European Union (EU)/European Free Trade Association (EFTA) nationals: a Swiss labor market test requirement.

By giving priority to the domestic labor market, the aim is to increase local workers' chances of finding a job and to limit the entry of new foreign workers

to meet the requirements of the labor market. With its two-tier structure, the system works in favor of domestic workers and workers from EU/EFTA states who can invoke the Agreement on the Free Movement of Persons between the EU/EFTA countries and Switzerland and are entitled to admission to the Swiss labor market.

In addition to Swiss nationals, domestic persons include those who are foreign nationals seeking employment who already live in Switzerland and are authorized to take up gainful employment. The admission of third-country nationals is therefore only possible if, in addition to the domestic and local labor force, there are no suitable workers from the EU/EFTA area for the Swiss labor market.

Occupations With a Pronounced Shortage of Skilled Labor

Within the last year, the following possible exemptions from the labor market test requirement have been added for consideration by labor market and migration authorities:

In occupations that are demonstrably affected by a pronounced structural shortage of skilled labor, it can be assumed that the domestic potential has been exhausted. If the demand for skilled labor in a particular occupation exceeds the supply under the given working conditions, a shortage of skilled labor can be assumed. However, skills shortages are not absolute, but they can vary in severity. The focus is on structural imbalances, which—in contrast to cyclical fluctuations between supply and demand for skilled labor—exist over a longer period of time.

These are often skilled workers who are not, or only insufficiently, available in the EU/EFTA area. For applications for residence for employment in occupations that are demonstrably affected by a pronounced shortage of skilled labor, the legally stipulated provision of proof of priority in enforcement can be facilitated.

In such cases, the authorities responsible for the preliminary labor market decision may refrain from demanding concrete search efforts. By plausibly demonstrating in an application that there is a shortage occupation in the specific case, the applicant company can fulfil the obligation to provide evidence. In this case, the competent cantonal authority can make the judgement that the domestic potential has been exhausted and that the

priority principle is therefore fulfilled.

Taking into account the State Secretariat for Economic Affairs (SECO) indicators and empirical values from the State Secretariat for Migration (SEM), the following occupational fields may fall under the facilitation of enforcement with regard to the obligation to provide evidence:

- Executives (management positions) in research and development; health care; education; information and communication technology; management consultancy; finance and insurance; the mechanical, electrical, and metal industry; and the production of chemical and pharmaceutical products and food products;
- Business administration specialists in management and organizational analysis;
- Engineering professionals (process and production engineers; civil engineers; engineers in electrical engineering, electronics, and telecommunications), natural scientists, mathematicians and engineers and specialists in information and communication technology (IT engineers, system analysts, software developers, application programmers, database and network specialists);
- Certain healthcare professionals: Medical specialists, medical assistants, physiotherapists, qualified nurses (with specialization), other medical specialization, other medical-technical specialists (e.g., medical-technical radiology assistants); and
- University and college teachers.

If the facts of the case are critical, or if the competent cantonal authority sees a reason to do so, it can request suitable special evidence (e.g., advertisement of the vacant position on the public unemployment system site or in the EU/EFTA area or reference to the skilled labor situation in the EU/EFTA area). The reasons for this could include the cantonal labor market situation, regional economic priorities, or macroeconomic interests.

The above is not a blanket exemption from the labor market test requirement but gives authorities discretion to grant work permit approvals without labor market testing for these types of employment. Individual case evaluation thus remains as vital as ever.

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