**WILDES LAW ON IMMIGRATION**

BY MICHAEL WILDES, ESQ.

# On The H-1B Professional Worker Visa Deadline

The Immigration and Nationality Act (INA) sets forth an alphabetical delineation of temporary visas that can be pursued in order for noncitizens to work and/or remain in the United States. Each type of visa in this wide range of temporary (nonimmigrant) visa categories serves a different purpose. Some afford the beneficiary the opportunity to remain in the United States for a few days, while others provide the security to remain for several years. This article provides an overview of one visa category, the H-1B category, which applies to noncitizens who wish to perform services in a "specialty occupation."

To qualify as a specialty occupation, the job must meet at least one of the following criteria:

1. An American bachelor's or higher degree or its equivalent is normally the minimum entry requirement for the position.

2. The degree requirement for the job is common to the industry or the job is so complex or unique that it can be performed only by an individual with a degree.

3. The employer normally requires a degree or its equivalent for the position.

4. The nature of the specific duties is so specialized or complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

Moreover, for an applicant to qualify to accept a job offer in a specialty occupation an individual must meet one of the following criteria:

1. Have completed a U.S. bachelor's or higher degree from an accredited college or university required by the specific specialty occupation.

2. Hold a foreign degree that is the equivalent to a U.S. bachelor's or higher degree in the specialty occupation.

3. Hold an unrestricted state license, registration, or certification which authorizes full practice of the specialty occupation, and be engaged in that specialty in the State of intended employment.

4. Have education, training, or progressively responsible experience in the specialty that is equivalent to the completion of such a degree, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

To avoid unfair competition by foreign workers, a Labor Condition Application (LCA) must be filed and certified by the Department of Labor (DOL) and served before filing an H-1B petition. In the LCA, the employer attests that they will pay the H-1B worker at least the prevailing wage for the position. The current LCA processing time is approximately 7-10 days.

A foreign national worker may hold H-1B status for a maximum of six years, and it may be granted in increments of up to three years at a time. If an individual is successful in obtaining an H-1B visa, the foreign national's spouse and children may obtain H-4 visas to enter and remain to accompany the H-1B in the U.S., although they are not authorized to work here.

The current annual cap on the H-1B category is 65,000 (6,800 of which are set aside for nonimmigrants who are citizens/nationals of Chile or Singapore). In addition, 20,000 H-1B visas are available to foreign workers who possess a master's or higher degree granted by a U.S. university.

In 2013, the United States Citizenship and Immigration Service (USCIS) began accepting H-1B petitions subject to the cap on April 1. USCIS reached the statutory H-1B cap for fiscal year 2014 within the first week of the filing period, which ended on April 5. Approximately 124,000 H-1B petitions were received during the filing period, including petitions filed for the advanced degree category. On April 7, USCIS used a computer-generated random selection process (commonly referred to as a "lottery") to select a sufficient number of petitions needed to meet the caps of 65,000 for the general category and 20,000 under the advanced degree category. For cap-subject petitions not randomly selected, USCIS rejected and returned the petition with filing fees, unless it was found to be a duplicate filing. The agency conducted the selection process for advanced degree petitions first. All advanced degree petitions not selected were part of the random selection process for the 65,000 limit.

For the coming fiscal year 2015, USCIS will accept cap-subject H-1B petitions on April 1 to request an employment start date of October 1, 2014. If the number received during the first week of April exceeds the annual quota, a lottery will likely occur. Thus, employers interested in sponsoring a foreign national employee must time their cases appropriately. Since the H-1B visa category application process can be very complex and time consuming we recommend that you consult with an immigration attorney to assist with the process early on.

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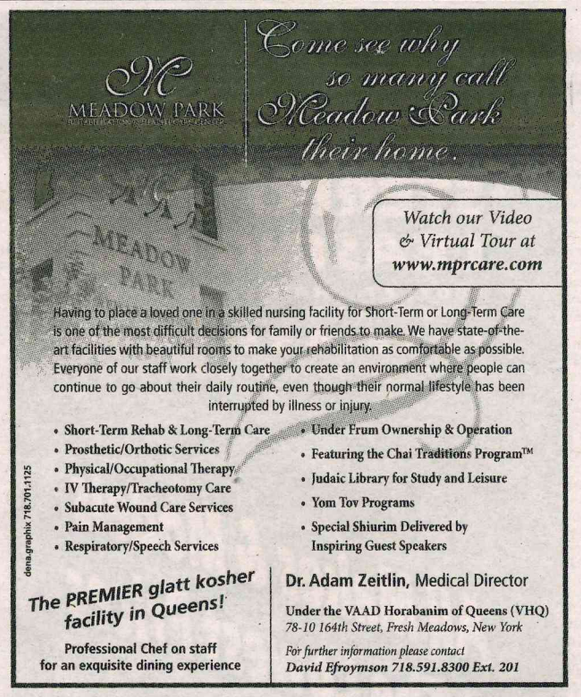



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**Lenox Hill Hospital**
4th Fl (off waiting room)

**New York Hospital Cornell Medical Center**
2nd Floor North, Room #107
Tel. in Room 212-746-7335

**Hackensack University Medical Center**
5th Floor West - Women Building, Room #121

**Good Samaritan Hospital (Suffern)**
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**Englewood Hospital and Medical Center**
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**Mount Sinai Hospital**
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Main Building, 4th Fl, #455

**Memorial Sloan Kettering Hospital**
1st Floor Room C-170

**Hospital for Special Surgery**
2nd Floor, Room 252 West

**Valley Hospital**
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This list is sponsored by Chesed 24/7. For additional assistance or information, please call Chesed 24/7 at **845-354-3233** or visit **www.chesed247.org**.


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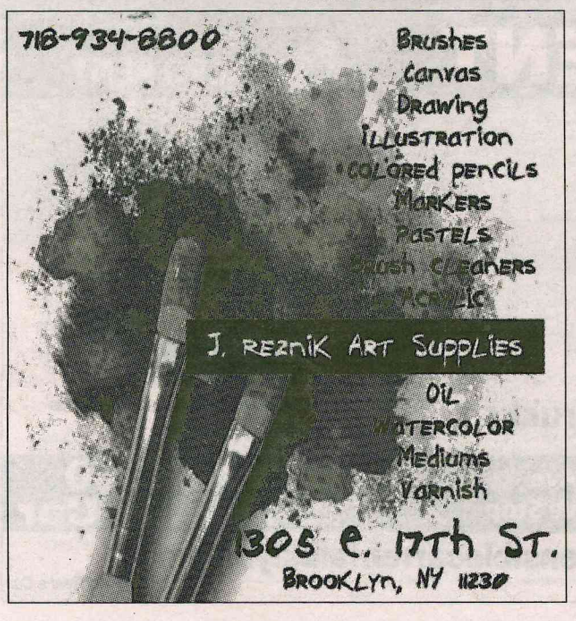


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