



# U.S. Citizenship and Immigration Services

H-1B Specialty Occupation  
Visa Program

# H-1B Visa Program

- The H-1B nonimmigrant classification is for aliens coming to the United States temporarily to perform services:
  - Specialty occupation
  - Department of Defense worker
  - Fashion model

# Labor Condition Application (LCA)

- Each petition for an H-1B worker must be accompanied by an LCA in which the DOL certifies:
  - Paid at least the actual or prevailing wage
  - Working conditions will have no adverse effect on U.S. workers
  - No strike or lockout is in progress.
  - The employer has notified the bargaining representative if the job is unionized, or has posted a notice that an LCA was filed.

# Numerical Cap

- Statutory numerical limitation of 65,000 per fiscal year except:
  - 20,000 U.S. master's degree or higher
  - Institutions of higher education or related/affiliated nonprofit entities
  - nonprofit research organizations or governmental research organizations
  - Petitions filed prior December 31, 2014 for work only in Guam or the Commonwealth of the Northern Marianas Islands
  - Petitions filed on behalf of current H-1B workers who have been counted previously against the cap

# Fiscal Year 2011 Filing Period

- The filing period for Fiscal Year (FY) 2011 began on April 1, 2010.
- On December 22, 2010, USCIS received enough H-1B petitions to reach the cap of 20,000 for beneficiaries who hold a masters degree of higher earned from a U.S. institution of higher education.
- On January 26, 2011, USCIS received enough H-1B petitions to reach the regular cap of 65,000.
- In comparison, between April 1 and April 7, 2009 USCIS received approximately
  - 42,000 cap-subject petitions
  - 20,000 U.S. master's petitions

# Recent Developments

- Guidance to the field was issued on January 8, 2010 regarding what factors constitute an “employer-employee” relationship in the H-1B context.
- Administrative Site Visit Verification Program (ASVVP)

# Guidance to the Field

- Employer-Employee Memo on January 8, 2010
  - A valid employer-employee relationship must exist for the duration of the requested H-1B validity period.
  - The memo provided guidance to adjudicators on how to determine whether a valid employer-employee relationship will exist between the petitioner and beneficiary, especially in third party employment situations.

# ASVVP

- Utilizes physical on-site inspections to determine
  - Existence of employment location
  - If a beneficiary according to the petition is
    - Employed at the location specified
    - Performing the duties as described
    - Paid the salary as indicated
- Initial findings
  - 15,175 H-1B site inspections in FY10
  - Initial results indicate fraud and noncompliance rates of 13%