

PUBLICATION

Immigration Update: H-1B Cap FY2016 and Aftermath; "Doing Business" for Multinational Managers; myE-Verify Available Nationwide

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H-1B Cap, H-4 Work and Options

If you filed an H-1B petition that did not get accepted for processing under the FY2016 Cap, you are not alone. This year a record number of 233,000 petitions were filed in a mad scramble for the annual supply of 85,000 new H-1B visas (65,000 for regular cap plus an additional 20,000 for workers with a U.S. Masters degree). This year's filings nearly doubled the petitions received in FY2014 (124,000) and also represent a significant increase from last year's 172,500 petitions. This increased demand resulted in petitioning employers having about a one-in-three chance of acceptance for processing (slightly better odds for those filing for workers with a U.S. Masters degree).

For ideas on non-H-1B paths to work authorization, please see the list of options summarized in our April 2014 posting: <http://www.bakerdonelson.com/immigration-corner-h-1b-cap-reached-04-16-2014/> and a general overview of options at: <http://immigration.bakerdonelson.com/about-immigration/ways-to-work/>

In addition to the list in the April 2014 posting, employment as an H-4 spouse is now an option. Applications for employment authorization by H-4 spouses of certain H-1B workers will be accepted for processing by USCIS as of **May 26, 2015**. If an H-1B worker is the beneficiary of an approved I-140 petition or has been granted H-1B status beyond the normal six-year maximum under the "AC21" law, his or her H-4 spouse can apply for work authorization.

See previous posting: <http://www.bakerdonelson.com/uscis-announces-new-work-card-eligibility-for-h4-spouses-02-25-2015/>

Further Guidance on the "Doing Business" Requirement

In *Matter of Leacheng International Inc.*, 26 I & N Dec. 532 (AAO 2015), the Administrative Appeals Office (AAO) determined that the "doing business" requirement for an immigrant petition for a multinational manager or executive does not include a requirement that the U.S. employer (Petitioner) be a direct party to contracts or a direct provider of services to U.S. customers. Rather, a Petitioner can satisfy that it has been "doing business" for the required period of a year by showing "that it is providing goods and/or services in a regular, systematic, and continuous manner to related companies within its multinational organization."

In *Leacheng*, the Petitioner was a U.S. subsidiary of a Chinese clothing manufacturing company that filed an I-140 Petition for a multinational manager requesting permanent employment for the beneficiary in the position of Deputy General Manager. As evidence that the Petitioner had been doing business for at least one year (required by 8 C.F.R. § 204.5(j)(3)(i)(D)), the company provided a service agreement showing that it provided marketing, sales and shipping services to U.S. clients *through its Hong Kong affiliate*. The Petitioner also provided evidence of its correspondence with U.S. customers and performance of the services listed in this agreement as well as copies of its service fee invoices sent to the Hong Kong affiliate. USCIS denied the

petition, finding that the Petitioner should have provided invoices and evidence of payment of invoices by U.S. customers directly to the Petitioner.

After analyzing the requirements and definition of "doing business," the AAO found that the USCIS denial was in error.

To determine whether a petitioner has met its burden, we consider the totality of the record, including relevant documentation to substantiate the petitioner's business activities. The fact that a petitioner serves as an agent, representative, or liaison between a related foreign entity and its United States customers does not preclude a finding that it is doing business as defined in the regulations.

...

Here, the petitioner established that it provides services to its foreign affiliate by marketing the foreign entity's products, locating buyers, maintaining relationships with customers, and facilitating the completion of sales contracts and shipping arrangements in the United States. It provided a copy of its service agreement with the foreign affiliate and substantial evidence that it is, in fact, performing the services specified in the contract on a regular, systematic, and continuous basis.

Lecheng, at 535-36.

This slightly broader interpretation of "doing business" may prove a useful tool for both I-140 and L-1 petitions (with nearly identical requirement at 8 C.F.R. § 214.2(l)(1)(ii)(H)) and is grounded in the reality of the global operations of many current business practices.

For the full precedential decision go to:

www.justice.gov/sites/default/files/eoir/pages/attachments/2015/04/16/3830.pdf

myE-Verify Now Nationwide

For those who don't know, as of April 13, 2015, myE-Verify services are now available nationwide. This free web-based service from the U.S. Department of Homeland Security was previously only available in 21 states and the District of Columbia. Workers can now create and maintain accounts, access resources about employee rights and employer responsibilities, and complete a Self-Check to confirm their own work eligibility.