

FROM THE EDITOR'S DESK

Welcome to the March 2012 edition of the VisaPro Newsletter!

The wait is finally coming to an end! The first day for filing the [H-1B](#) visa petition for fiscal year 2013, April 2, 2012, (April 1, 2012 is a Sunday), is quickly approaching. USCIS will accept H-1B petitions until it establishes that it has received sufficient filings to meet the cap for the year - the standard cap being 65,000 and the master's cap being 20,000. Petitions are considered accepted on the date that the USCIS receives the petition, not the date that the petition is postmarked. Since the economy is still recovering, it seems highly unlikely that the cap will be filled within the first few days. To eliminate uncertainty, however, and to ensure a successful filing, we recommend employers to start as early as possible and not wait until the last minute. [Contact VisaPro](#) immediately if you are an employer, considering petitioning for an H-1B employee for the fiscal year 2013.

Coinciding with the beginning of the [H-1B](#) FY 2013 filing period, USCIS has updated its H-1B Employer-Employee Relationship Q&A. While USCIS still requires that the employer has the burden to prove that a qualifying employer-employee relationship exists, it has clarified that the agreement or contract between a consulting company and third party client is not necessarily required and also clarified that the employer must show, by a preponderance of the evidence, that it has the right to control the work of the beneficiary and provides clearer examples of the same. One can only hope that USCIS adjudicators follow its own guidance.

In consular processing news, carrying forward the implementation and expansion of the Visa Waiver Interview Program, the [US Embassies in Moscow and New Delhi](#) have announced [expansion of its eligibility to participate in the program](#). Under the expanded program, applicants in India who are applying for a B1/B2 visa and whose prior B1/B2 visa has expired within the last 48 months or is still valid, and applicants who are applying for a C1/D, J2, L2, or H4 visa and whose prior visa in the same category has expired within the last 12 months or is still valid are eligible to apply for a new visa without an interview. Applicants in Russia who are renewing a B1/B2 or C1/D visas that has expired within the last 47 months are also eligible to apply for a new visa without an interview. One hopes that the program will be extended to more visa categories and most

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YOUR OPINION

Do you welcome USCIS' recent decision to allow R-1 Religious Workers to recapture time spent outside the US?

- a. Yes
- b. No
- c. Not Sure

[Cast Your Vote](#)

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other countries at the earliest.

On the Employment Based Green Card front, while the [EB-2](#) priority dates for India and China remain unchanged at May 01, 2010 in the recently published U.S. Department of State Visa Bulletin for April 2012, [Mr. Charles Oppenheim, the Visa Chief at the Department of State predicts that the China and India EB-2 category will retrogress to August 2007 when the May visa bulletin is published.](#) This means that individuals who filed [Adjustment of Status](#) applications in the last several months based on the rapidly advancing dates whose Green Cards are not issued by the end of April may not receive their Green Cards until the numbers advance again. It is advisable that you [Contact VisaPro](#) immediately if you believe your priority date is now current and you need any assistance in filing for an [Adjustment of Status](#) application or for an Immigrant Visa.

We are also happy to share with you that [our Immigration Attorney, Mr. Thomas Joy, will be speaking at the International HR SIG Event organized by Northern Virginia Society for Human Resource Management at McLean, VA on April 19, 2012.](#) During his presentation, **“U.S. Immigration: What Corporate HR Must Know”**, Mr. Joy will be outlining major areas of immigration law and discuss how to formulate effective visa strategies. His speech will cover topics including Employer Immigration and I-9 Compliance Requirements, Successful [H-1B](#) and [L-1](#) visa strategies, Special Visas ([E-1](#), [E-2](#), [E-3](#) and [TN](#)), Green Cards, Consular Visa Process, Visa Denials and Port-of-Entry Issues. [Click here](#) for more details on the program description and registration formalities. [We invite you sign-up for the program and look forward to meeting you at McLean, VA.](#)

In other Immigration related news:

- USCIS announced its decision to extend an accommodation for [H-2A](#) workers in the shepherding industry to transition to the three-year limitation of stay requirements. USCIS requires H-2A shepherders who have reached their maximum three-year period of stay to depart the United States by August 16, 2012, and remain outside the country for at least three months before petitioning for H-2A classification again
- Secretary of Homeland Security Janet Napolitano has announced that the [DHS will be designating Syria for Temporary Protected Status \(TPS\) for Syrians currently present in the United States for eighteen months.](#) The registration period has not yet opened and USCIS will be posting to the Federal Register shortly and will provide additional guidance

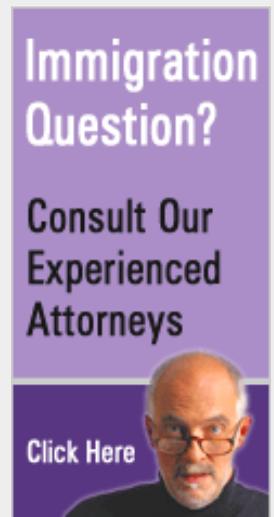
IMMIGRATION QUIZ

Win a FREE Online Consultation!

Submit your answer to the query below. The best response will be published in the next **Immigration Monitor** and the winner will receive a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of March 2012.

I do not have a master's degree but my work experience is equivalent to the knowledge and background of a master's degree holder. Can I qualify as an "exempt" [H-1B](#) worker?

[Submit Your Answer](#)



Winner of the Immigration Quiz - February 2012:

Andrew

The Question:

I came to the US on an [H-1B](#) in August 2010. I transferred to another company in May 2011 after an H-1B petition was filed and approved on my behalf. Since then I have been working with them. I will be traveling to India in April. The H-1B visa currently in my passport shows the name of my previous company but the expiration of the visa is not until after I return. Will I need to apply for a new H-1B visa while in India, or can I travel back on the same visa even though I

on how to register for TPS, who is eligible to apply for TPS, and when to begin filing TPS applications. We will keep our readers posted of all developments in this connection once USCIS issues further updates related to TPS for Syrians.

Other Developments in Immigration Law:

[H-2B Final Rule: DOL issues Guidelines on Transition Procedures](#)

On February 21, 2012, the Department of Labor (DOL) published a Final Rule amending H-2B regulations. The [H-2B](#) Final Rule becomes effective on April 23, 2012. DOL has recently published guidelines providing transition procedures explaining how it will treat applications filed in advance of and after the April 23rd effective date of the 2012 H-2B Final Rule. Applications filed under the current regulation must be sent to OFLC's Chicago National Processing Center (CNPC) and postmarked no later than midnight April 22, 2012. Any application filed under the current regulation that is postmarked on or after April 23, 2012 or later will be rejected.

[R-1 Religious Workers Can Recapture Time Spent Outside the U.S.](#)

The USCIS has recently issued a Policy Memorandum outlining the procedure to be used for recapturing time spent outside the US by [R-1](#) nonimmigrants when seeking an extension of their R nonimmigrant status. USCIS has indicated that it is extending the recapture policy under which nonimmigrant aliens and their dependents may recapture time spent outside of the US when calculating their maximum period of authorized stay to the R-1 nonimmigrant classification. As a matter of policy, USCIS will count only the time spent physically in the US in valid R-1 status towards the 5-year maximum period of stay. When requesting an extension, the petitioner may request that full calendar days spent outside the US during the period of petition validity be recaptured and added back to the alien's total maximum period of stay. The burden of proof rests with the petitioner to establish the alien's eligibility for any recapture benefits.

Immigration Articles and Other Fun Stuff

Check out our 'Featured Video' of the month [H1B Visas – 12 Common Myths and Realities](#), where we take a look at many myths attached to the visa and showcase the real truth about [H1B](#) visas. Please check out and subscribe to our YouTube channel to take advantage of another great service provided to you by VisaPro.

Also remember to check out our **In Focus** article for this month- [The H1B for Market Research Analysts: Is It Still Possible?](#) that discusses H1Bs for Market Research Analysts, while showcasing a recent order of the Southern District of Ohio District Court directing grant of [H1B](#) status to a beneficiary as a Market Research Analyst.

Every month we introduce a new and interesting question for our opinion poll. Last month's poll results indicate that

am working with a different H-1B employer now?

The Winning Response:

Yes, you can use the same H-1B visa from your old employer if it is still valid, to enter into the US. But you must be otherwise eligible. Please carry all supporting documentation like all recent pay stubs from your new employer, approval notice and petition copy of H1B petition filed by new employer, etc. so that you can show them to the Immigration Officer at Port-of-Entry.

Andrew receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of March 2012.

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NEW TO VisaPro?

Do you have questions regarding the [H-1](#), [L-1](#), [E-1](#), other work visas or Green Cards? VisaPro has answers to commonly asked immigration questions. [Click here](#) to know more.

an overwhelming majority of our respondents (**90%**) indicated that they welcome DHS' proposed reforms to allow spouses of **H-1B** visa holders to work legally while the principal H-1B holder waits for his or her Adjustment of Status application to be adjudicated. We appreciate that people take interest in the opinion question and cast their votes to give us their feedback. Keep it up! And please continue to cast your vote to express **Your Opinion**.



We congratulate **Andrew** for winning last month's Immigration Quiz. We received a significant number of responses from our readers, but **Andrew** gave the best answer and won a free online consultation to discuss the concerned Immigration issues.

It's time to get ready for this month's quiz. If you know the correct answer your name might be featured in next month's newsletter. **All the Best!!!**

To ensure you receive your Immigration Newsletter, please add Immigration-Monitor@VisaPro.com to your address book or safe list.

See you in April with a lot more noise from the Immigration World!

Christine

FEATURED VIDEO

H1B Visas – 12 Common Myths and Realities



The H1B Visa category is one of the most preferred visas for foreign nationals who wish to work in the United States. There are many myths, however, attached to the visa. Let's take a look at these myths and learn the real truth about H1B visas.

[More Videos...](#)

[H2B Cap Count Update](#)

USCIS has updated the count of [H2B](#) visa petitions received and counted towards the H2B cap for the fiscal year 2012 employment. As of March 23, 2012, USCIS has received filings on behalf of approximately 39,339 beneficiaries, and approved approximately, 35,679 H2B beneficiaries for the 1st half of FY 2012.

[April 2012 Visa Bulletin: EB-2 Priority Dates for India and China remain at 05/01/10](#)

In the recently published U.S. Department of State Visa Bulletin for April 2012, the [EB-2](#) priority dates for India and China remains at May 01, 2010. Meanwhile, the EB-2 numbers for other countries remained current, along with [EB-1](#), [EB-4](#), and [EB-5](#) numbers for all countries. In the [EB-3](#) category, the priority dates for professionals and skilled workers advanced from 01/01/05 to 03/01/05 in respect of China; from 08/22/02 to 09/01/02 in respect of India; and from 03/15/06 to 04/08/06 in respect of all other countries. In the EB-3 Other Workers category, the priority dates remained at 04/22/03 in respect of China, but advanced from 08/22/02 to 09/01/02 in respect of India; and from 03/15/06 to 04/08/06 in respect of all other countries.

IN FOCUS

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The H1B for Market Research Analysts: Is It Still Possible?

U.S. Employers hiring foreign national professionals for the position of Market Research Analysts on an H1B generally face an arduous task to establish and prove that the proposed employment of the foreign national professional as a Market Research Analyst satisfies the requirements stipulated for the H1B. H1B petitions for Market Research Analysts often generate a Request For Evidence (RFE) and in many cases, results in the ultimate denial of petitions. However, in a recent Decision and Order, a U.S. District Court rejected USCIS's narrow interpretation of the Department of Labor's (DOL) Occupational Outlook Handbook (OOH) and directed granting of H1B status to the beneficiary as a Market Research Analyst [*Residential Finance Corporation vs. USCIS*]. In this article, we present a brief synopsis of the key points laid out by the court in its order, which will be helpful in better understanding the scope for Market Research Analysts under H1B.

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US Immigration: What Corporate HR Must Know

April 19, 2012

McLean, VA.

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Now

QUESTIONS AND ANSWERS

Q1. I am running an online e-commerce business from Spain, which I own 100%. I want to open up a connected business in the U.S. and manage it. Please let me know what visas would be suitable for me? I am a citizen of Spain.

Ans. As a citizen of Spain, you can invest in the U.S. and get an [E-2](#) Treaty Investor Visa to come to the U.S. to manage it. You would have to own at least 50% of the business in the U.S., and you have to invest a substantial amount of money to start up the business. Alternatively, if you have had your business in Spain for more than one year and for at least one year out of the past three years you have worked in that company as an Executive or Manager, you may be able to transfer yourself to the U.S. to open up a new office or a branch office or affiliate in the U.S. and be considered for a "New Office" [L-1](#) visa. Please contact an Immigration Attorney and review your situation to understand which visa would be most appropriate for you in your situation.

Q2. I am in the U.S. currently in [H-1B](#) status. My wife has come over to visit me in the U.S. on Visa Waiver. We would like her to stay here in the U.S. Can we apply for a change of status to [H-4](#)?

Ans. You cannot apply for a change of status from Visa Waiver to [H-4](#). Your wife has to leave the U.S. before the period granted to her to stay on Visa Waiver expires. When she returns to her home country, she needs to apply for an H-4 visa with the U.S. Consulate or Embassy. After she gets her H-4 visa stamp in her passport, she can come to the U.S. and she will be given permission to stay in the U.S. until the same day that your [H-1B](#) expires.

GOT A QUESTION?

If you have a short, simple query on immigration to the U.S., send your questions to us. We will select and answer a few of the queries in every issue.

Note: Responses posted in this section provide only general information. Since immigration law is a complex matter, please [consult](#) an immigration attorney before acting upon any responses provided.

[Ask Your Question](#)

[More Q&A](#)

SUCCESS STORIES

"Knowledgeable, fast, courteous, efficient are all words that describe the services I received from VisaPro. They were very helpful in all phases of the [H-1B visa](#) process and they got it right the first time. The online Visa ordering system kept me posted every step of the way allowing me more time to focus on our company. I have tried other Visa services, but VisaPro is the best by far. VisaPro is the only way to go!"

Raymond Meyers

President
[EBOZ, Inc.](#)

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