

IMMIGRATION EDGE

April 1, 2009 is upon us: Time to file your new H1-B petition

numbers will likely continue this year.

After the sunset of the provisions of the American Competitiveness in the 21st Century Act (AC-21) in 2002, which had raised the annual number of H-1B visas to 195,000, the "H-1B cap" has been reached in each of the past several years leaving thousands of professional workers and employers seeking to hire them out of business. The annual cap of 65,000 is grossly inadequate to accommodate businesses, as has been made obvious over the past few years, with the cap reached within a few days of April 1, 2008, despite the US economy experiencing a deep recession.

Employers seeking to hire an H-1B professional must establish that the prospective employee: (1) has a bachelor's degree; (2) seeks to come to the United States to perform services in a position requiring a bachelor's degree or higher for entry into the position; and that (3) the degree is directly related to the nonimmigrant's field of endeavor. The U.S. employer or sponsor must demonstrate a need for a worker and attest that insufficient domestic labor is available to fill the need. Of course, the U.S. employer must also establish his ability to pay the "prevailing wage" for the position.

If the intended worker is overseas, he may obtain an H-1B visa from the U.S. Embassy upon USCIS approval of a Petition in the U.S. A nonimmigrant visitor in the United States, for instance on a B-2 visa, may apply for "change

of status" from visitor to H-1B professional worker. The new status will be indicated on the person's I-94, but is not a travel document. In order to travel and reenter the United States in H-1B status, a visa must be obtained at a US Embassy or consulate abroad.

The number and types of occupations that will qualify people for classification as H-1B professional workers are constantly expanding. With the development of so many new highly specialized occupations in the high-tech industries, more and more H-1Bs are necessary to fill the demand, and to maintain the status quo for more traditional occupations such as accountants and engineers.

Although certain categories of workers are exempt from the H-1B cap, there is no doubt that the 65,000 H-1B visas available for most jobs in "specialty occupations" will be used up by mid-Summer. With that in mind, employers desiring to hire professional workers under the H-1B category would do well to file their Petitions early, and file them properly, or risk being shut-out until April 1, 2010 when the quota reopens for FY 2011.

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(Advertising Supplement)

MINDING YOUR FINANCES



ATTY. RAYMOND BULAON

As our economy continues to crumble, foreclosures continue to rise at an unprecedented rate. Distressed homeowners struggle to keep their homes as they desperately look for possible solutions. A lot of people are trying to get their loan modified by their lender but for most, the process has been extremely frustrating.

A loan modification is simply changing one or more terms of your loan that allows you to bring your account current (if you are delinquent) and to make your payment more affordable. It is not the same as refinancing where you need to obtain a new loan to pay off your current loan. Thus, it doesn't require that you have "good" credit. As a matter of fact, people who need loan modification are usually people whose credit has already been damaged by late payments. In loan modification, the terms that can be changed depend on what type of loan you have. For example, if you have an adjustable rate mortgage (which is what most of the problems loans are), you may be able to change your loan to a fixed-rate loan. If you have a fixed-rate loan, you may be able to lower the rate so that the payments can be lowered accord-

Loan modification: Do it yourself or get help?

ingly. In some cases, you may extend your loan term from 30 to 40 years. Principal reductions, though rare, may sometimes be granted.

Although you don't necessarily need an attorney to do a loan modification with your lender, having an attorney negotiate on your behalf does have its advantages and may significantly increase your chances of success. The reason is that the loan modification process requires a careful analysis of your circumstances, facts concerning your finances and the property in question, an understanding of what your lender may be looking for and most importantly, legal options that may be available to you if all else fails. Sometimes, what also further complicates the process is that the decision is not always made by the lender who owns the loan. Instead the decision is made by a group of investors who own a part of the mortgage-backed security. These investors decide based on what helps them further reduce their losses, not based on what serves you best, although your "hardship" impacts that decision. Thus, it is not only important to present a strong case to the lender in order to get your application approved but it is just as important to have an attorney on your side who can help protect your legal interests during negotiations with the lender.

A lot of people also get frustrated trying to do it on their own because the process requires a series of time-consuming phone calls made to the lender, hours of being put on hold and speaking to lender representatives who don't even understand your file

or know what they are doing. In my opinion, a lot of these lenders are terribly understaffed or poorly staffed with individuals who are often overburdened with more files than they can handle. So unless you are adequately prepared with the right information to present your case and able to effectively communicate to your lender why a loan modification is in their best interest, you are probably wasting your time and not helping your situation at all.

There is no telling where this current economic crisis ends. The Obama administration has recently unveiled a housing plan which includes financial incentives to lenders who will work with borrowers to voluntarily modify their loan. Given the scale of the crisis, the question still remains whether this will be enough. A few lenders have at least already expressed willingness to modify loans for borrowers who meet certain criteria.

A loan modification is only one of the many options that may be available to you if you are struggling with mortgage payments and/or facing foreclosure. Again, consulting with an attorney may help you explore options you didn't even know existed. For a free consultation, please call our office at Toll-Free 1-866-477-7772. We have offices in Glendale, Cerritos and West Covina.

None of the information herein is intended to give legal advice for any specific situation. Atty. Ray Bulaon has successfully helped more than 4,000 clients in finding solutions to their debt problems. To schedule a free attorney consultation, please call Ray Bulaon Law Offices at TOLL FREE 1-866-477-7772.

(Advertising Supplement)

ATTENTION HOMEOWNERS

You can Bring Down Your Loan Amount to Your Home's Current Value

IF you are upside down by \$100,000 or more

IF you purchased in the last 4 years or refinanced in the last 3 years

IF you have a "problematic loan":

- 1 yr/2 yr ARM or Option ARM loan • Interest Only loan
- Non-Amortizing/Negative Amortization loan
- No Doc or Low Doc Loan • Stated Income Loan

You may be a victim of abusive lending by the mortgage industry

You have legal rights to a WRITE DOWN of your mortgage to your home's current value

**SAVE YOUR HOME!
SAVE YOUR MONEY!
SAVE YOUR CREDIT!**

**Not "Attorney-assisted".
Not "Attorney-backed".
Licensed ATTORNEYS fight for your rights against predatory lending.**

Total Legal Services for Foreclosure Prevention



**In Foreclosure? Not Behind?
Severely Delinquent? Job Loss or Pay Cut? Investment Property? Residential Property? Struggling to Pay Monthly House Payment?
CALL NOW!**

THIS IS NOT A LOAN MODIFICATION

You must be upside down by 100,000 to qualify. And you do not need to be behind in your payments!

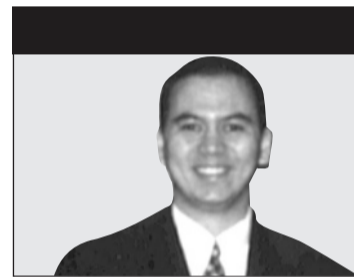
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Reasonable Fees And Payment Plans Available

Consequences for failure to work for employer after getting Greencard



ATTY. EUGENE PALACIOS

DEAR Atty. Palacios, I am a registered nurse who just arrived from the Philippines pursuant to an approved immigrant petition filed by my employer here in California. The U.S. Embassy in Manila issued me an immigrant visa and I expect to get my greencard anytime soon. I signed an employment agreement with my employer but I am now getting better offers from other hospitals. What are the consequences if I fail or refuse to work for the employer who petitioned me after getting my greencard?

Sincerely,
Maria

Dear Maria:

When an employer files the petition on behalf of a foreign national, whether a registered nurse (RN) or not, the package normally includes a letter containing the employer's offer of full-time and permanent employment to said individual. This letter is a prerequisite before any employment-based immigrant petition can be approved because it determines whether the employer, from the beginning, has intent to employ the foreign national on a full-time and permanent basis. Please note that absent such intent, the petition will be considered fraudulent or bogus and will be denied.

Generally, before some employers agree to sponsor a foreign national, they require the individual to sign an employment agreement with them, typically for a period of two years. If there is an employment agreement, such document is likewise normally submitted to United States Citizenship & Immigration Services (USCIS) because it serves as evidence not only of employer's intent, but also of the foreign national's intent to work for the employer on a full-time and permanent basis.

In your case, the petition filed by your employer on your behalf was approved and you were issued an immigrant visa by the U.S. Embassy on the basis of your employer's representation that there is a full-time and permanent employment as an RN that awaits you in California and on the basis of your representation that you intend to work for said employer as an RN on a full-time and permanent basis upon your arrival in the United States.

Therefore, to maintain lawful permanent resident status (LPR) status, it must be shown after your admission that there was in fact a genuine offer of employment and a genuine intent on your part to work for that particular employer that petitioned you. To establish this, we normally advise our clients who have been admitted

into the United States by virtue of an employment-based petition to work and continue working for that particular employer for a reasonable period of time. As to what period of time is considered reasonable, some lawyers opine that 180 days is sufficient but the USCIS has not yet issued any guidelines regarding this issue. To play it safe, we usually tell our clients to work for at least a year from time they received their greencard.

Failure or refusal on your part to work full-time for your employer for a reasonable period of time, unless due to justifiable circumstances, may result in the latter taking an adverse action against you, e.g., filing with the USCIS a complaint indicating your lack of genuine intent to work for the company, as well as the filing of a complaint with the superior courts of California for breach of contract.

If the USCIS finds out that you did not work at all or you only worked for a very short period of time as an RN for the petitioner that sponsored you, there is a risk that it might initiate actions leading to the revocation of your LPR status as well as those of your derivative beneficiaries. Even if the employer did not file a complaint against you with the USCIS, the USCIS could still find out a few years later that you did not work at all or you only worked for a very short period of time as an RN for the petitioner that sponsored you when you apply for naturalization or file a petition for a family member.

Further, please note that the employment agreement you signed with your employer constitutes a binding contract between you and your employer. By virtue thereof, you have voluntarily bound yourself to comply with the terms and conditions contained therein and should you breach any of its terms, you may be held liable for a substantial amount of monetary damages.

If you want to know more about this topic, please feel free to call us at (818) 956-8844 [Glendale] or at (626) 331-8188 [Covina] to schedule an appointment for your free initial consultation, or visit us at www.palacioslawfirm.com.

Attorney Eugene M. Palacios is the founder and principal of the Law Offices of Eugene M. Palacios, APLC. He has great depth of experience and a successful track record in handling employment and family-based petitions as well as PERM and naturalization applications. He is licensed as an attorney in California and is admitted to practice before US Immigration Courts, the US Central District Court, and California State Courts. He is also an active member of the American Immigration Lawyers' Association. His offices are located at 100 North Brand Boulevard, Suite 600, Glendale, California 91203 and at 800 South Barranca Avenue, Suite 250, Covina, California 91723.

The above article does not, and is not intended to, constitute legal advice for a specific immigration problem and does not create an attorney-client relationship between our office and the reader. It is for informational purposes only and reflects our law firm's opinions and views on general issues.

(Advertising Supplement)