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Options after H-1 Quota is Over

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Hello, everyone. This is Rajiv S. Khanna for the Law Offices of Rajiv S. Khanna, P.C, immigration.com. We are discussing with some of our clients the issue of what to do now that the H-1 quota has expired. What are my options?

Well we can look at the options two ways or three ways. Actually, there are several variables.

Variable one: Can I continue to work? The answer is yes, if you have the STEM extension option. In this case, we are working towards 17 months of the STEM extension anyway.

What is the STEM extension?

Some people who are F-1 OPT can get further 17 months of OPT if they are in the discipline of Science, Technology, Engineering or Mathematics (STEM). Any one of these disciplines, if you are in STEM, you can get a further 17-month extension.

So can you continue to work? One way is STEM extension. If that is not an option, some people go back to school and they get something called CPT (Curricular Practical Training). That is an option that I don't advise. Why? Because this option has come under the gun. USCIS has become very suspicious of it because the regulations say, if somebody wants to get a CPT by going back to school in the first semester itself, then the curricular practical training, the CPT, must be integrally related to the education. In other words, you cannot really get a good education without that CPT and because of the ?misuse? or the perceived misuse that government sees, they have come down hard upon universities that have been giving CPTs too liberally. So CPT has become a suspect option, unless you are going to join a university that is well-recognized, a good university, or a good school that is fully accredited. And I actually have a video on our website, our blog, on how to see if the school

is accredited. (<http://www.immigration.com/media/eb2-green-card/accreditation-distance-e...> [1]
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So 17-month STEM extension, CPT not recommended, but possible. You can, of course, go back to school and stay until you are ready to file for the H-1 again. If you have an option, for example, if your spouse is on H-1, you can convert to H-4, or L-2 if your spouse is on L-1. That would be another option. One option is to go back to your home country if the work can be outsourced to you. It is perfectly legal for you to work for your employer from your home country and they can pay you either as an independent contractor or on a project basis or even as an employee. You can work out the details with your CPAs, but that is certainly a possibility.

Now the last option that I see is there is a very fine distinction between what jobs are quota and what jobs are quota-exempt. The interesting thing is the way that the government looks at it is even though the employer is a quota employer, but if the job is quota-exempt, you are not subject to the quota. Let's take an example of a quota-exempt job. If you are working for a university in a research position or any academic position, you are quota-exempt. But what if your employer places you to work in a university research facility? Because the job is quota-exempt, that H-1 will be quota-exempt, even though your employer is a quota employer. So look for a job that is quota-exempt. That's another possibility.

Those are the options as I see them.

Question--How do they go about applying for a STEM extension?

The way it works is the company that you are working for has to agree to be e-verify compliant. That means they open an account with the government office for being an e-verify company. You sign a bunch of contracts with them and you say every person that we hire, we will run them through the e-verify program, which is basically a way of ensuring that they have proper authorization to work in the US. For larger companies, I would probably be reluctant to go e-verify, especially if you are a multi side company that has its own problems, so we need to assess that very carefully. For smaller companies and one-side companies, it's much easier to go through e-verify. It's not a problem. E-verify basically involves agreeing to go through verification of every employee you hire from now on. You have put them on the e-verify database.

To get the STEM extension, they don't have to go back to school. They notify the school office, and the school issues new paperwork based on their existing paperwork. They don't have to go back to school.

If you already have your STEM extension, after that expires, you could take classes for CPT, work from your home country, try to convert to a spousal visa, find a quota-exempt job, or wait for next year's quota.

One more question that people have asked me. Is it okay for me to volunteer? What if I want to work, but I don't want to get paid for it? I don't want to lose all this experience that I have.

The answer is that that's risky. However, the way it works is, if the person volunteers, let's assume they're on H-4. They work, but they neither expect to be paid nor do they have any benefits coming to them. Health insurance, for example. Then, it's okay to volunteer.

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