

H-1B Master's Cap: NOT Every Master's Degree from a United States College or University Qualifies a Foreign National.

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Introduction

Many F-1 visa holders, particularly those who are engaged in Optional Practical Training (OPT), often change their nonimmigrant immigration status to become professional specialty workers (H-1B workers). The H-1B cap is the Congressionally-mandated limit on the number of individuals who may be granted H-1B status during each fiscal year. Most foreign nationals seeking H-1B nonimmigrant classification are subject to the 58,200 capⁱ. There are an additional 20,000 H-1B visas, which are restricted to individuals who receive a master's degree (or higher degree) from a United States college or universityⁱⁱ.

Immigration practitioners, F-1 students, and prospective H-1B employers should note that *not* every master's degree from a United States college or university qualifies a foreign national for the additional 20,000 H-1B visas under the H-1B "master's cap". For an individual to qualify under the master's cap, a few criteria need to be met.

Degree Must Qualify As a Master's Degree.

First, the degree must qualify as a master's degree. To determine whether a U.S. issued degree is a master's degree, USCIS adjudicators consider more than the simple nomenclature of a degree. The fact that degree itself is or is not titled as a master's degree is, by itself, not dispositive. For instance attorneys typically hold a "Juris Doctor" degree (J.D.) and medical doctors hold a similar "Doctor of Medicine" degree (M.D.). Prior to earning either a J.D. or M.D. degree, the holder must first earn at least a bachelor's degree in some particular academic field. Accordingly, while neither degree is likely equivalent to a Ph.D., a J.D. or M.D. degree would be considered to be equivalent to, if not higher than, a master's degree.

Educational Institution Must be a Public or Other Nonprofit Institution and Accredited.

To qualify for the H-1B master's cap, prospective H-1B Beneficiary must hold a master's degree issued by a "U.S. institution of higher education" as defined by Section 101(a) of the Higher Education Act of 1965.

To qualify as a “U.S. institution of higher education” as defined in section 101(a) of the Higher Education Act of 1965, the educational institution must satisfy five (5) requirements. First and foremost, the educational institute must be a *public or other nonprofit* institution. Second, the master’s degree issuing institution must be accredited by a nationally recognized accrediting agency or associationⁱⁱⁱ.

Moreover, the educational institution must meet following three (3) requirements: (1) the institution must admit as regular student only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (2) such an institution must be legally authorized within such state to provide a program of education beyond secondary education; and (3) the institution must provide an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree.

Illustration: Graduates Who May or May Not Qualify for the H-1B Master’s Cap.

To illustrate, consider a case of two seemingly equivalent foreign students’ —one holding Master of Business Administration (MBA) degree from the DeVry University’s Keller School of Management and the other one from Thunderbird School of Global Management. Since DeVry is a for-profit private university, holding an MBA degree from the Keller School of Management will not qualify the foreign student for the Master’s H-1B cap. The second student who received an MBA from the Thunderbird School of Global Management will qualify for the Master’s H-1B cap because, even though it’s a private business school, it’s a nonprofit educational institution. However, note that the student from the Keller School of Management will still qualify for the regular H-1B cap.

Conclusion

Based on the foregoing, students attending or who intend to attend a master’s or higher degree program in the United States with the hope that their master’s degree would qualify him/her for the master’s H-1B cap should make two specific inquiries: First, s/he needs to determine whether the educational institution is a private or a public institution. Also, the foreign student needs to determine whether the educational institution is classified as for-profit or nonprofit.

Holding a master’s or a higher degree from a public educational institution will always qualify a foreign student for the H-1B master’s cap. However, when attending a private university/school it is worth checking whether the educational institution is classified as a for-profit or nonprofit organization. Like public educational institutions, receiving a master’s or a higher degree from a private non-profit educational institution will qualify the individual for the master’s cap. But, if the private school/university is a for-profit educational institution, then having a master’s or higher degree from that institution will not meet the requirements for the H-1B master’s cap. Having said that, the student would still qualify for the regular H-1B cap.

ⁱ Up to 6,800 visas are set aside from the cap of 65,000 during each fiscal year for the H-1B1 program designed specifically for the nationals of Chile and Singapore (1,400 visas for the nationals of Chile, and 5,400 visas for the nationals of Singapore). The annual 6,800 H-1B1 numerical is counted against the H-1B numerical cap.

ⁱⁱ Master’s or higher degree (or its equivalent) from a foreign university/school does not qualify an individual for the H-1B master’s cap.

ⁱⁱⁱ Or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary

has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such agency or association within a reasonable time.