



Professional Perspective

H-1B Employer Hurdles When Sponsoring MBA Graduates

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H-1B Employer Hurdles When Sponsoring MBA Graduates

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The road to H-1B sponsorship can present unexpected hurdles for MBA graduates seeking H-1B sponsorship. In the current environment, Requests for Evidence or RFEs should not be unfamiliar to those who work in the immigration space. The surge in H-1B RFEs and denials reflect the increasing scrutiny levied against U.S. employers and H-1B candidates.

A common issue in H-1B RFEs is whether the H-1B worker qualifies based on prior academics. In ideal circumstances, the candidate's education and/or experience will be clearly aligned with the H-1B role, as in the case of a graduate with a computer science degree seeking H-1B sponsorship to work as a software engineer. However, not all H-1B petitions are treated equally, nor are all decisions black and white. The connection between a specialty occupation degree and the H-1B role may be less clear-cut for many individuals seeking H-1B sponsorship, including MBA graduates.

U.S. Citizenship and Immigration Services has repeatedly stated that MBA degrees are overly generic and not adequately specialized to prepare a candidate for H-1B sponsorship. *Royal Saim Corp. v. Chertoff*, 484 F.3d 139 (1st Cir. 2007). However, a close examination of the scope and rigor of the typical MBA program, including its curriculum and opportunities for specialization, demonstrates that USCIS's understanding of MBAs is fundamentally misguided.

An MBA is typically a two-year program that aims to make students proficient in various subjects of management and experts in one subject. The first year mainly focuses on giving students a high-level exposure to various management topics. During their studies, students will have the opportunity to focus on particular subjects, and in their second year, they will be required to declare a specialization from areas such as finance, marketing, accounting, supply chain management, and economics. Choosing a specialization can be a trying process for students, especially those who seek H-1B sponsorship because they must carefully consider their career goals.

Let's say a recent MBA graduate is about to be employed by a company, and requires H-1B sponsorship. Before onboarding the graduate, the company files an H-1B petition with USCIS. After reviewing the petition, the agency will determine whether the graduate qualifies for the role based on their education. Because the candidate in question has an MBA, USCIS will likely scrutinize this petition on the basis that the MBA degree is "too generic" for H-1B purposes.

To clearly demonstrate that the candidate qualifies for the role based on her education, the employer must answer 3 questions: what are the job duties, what is the MBA graduate's area of specialization, if any, and is there a strong nexus between the job duties and the graduate's academic transcript (i.e., is the MBA degree normally a minimum requirement for entry into the position)? An employer who is able to answer these questions convincingly will have a better chance of overcoming or preempting an RFE.

In a well-known federal district court case, the court rejected the premise that the name of the field of study controls whether an individual is eligible for an H-1B," noting that "diplomas rarely come bearing occupation-specific majors." *Residential Finance Corporation v. U.S. Citizenship and Immigration Services*, No. 2:2012cv00008 - Document 20 (S.D. Ohio 2012). However, the Residential Finance case is only persuasive authority to the USCIS and not required to be followed by individual officers deciding specific H-1B cases. The court logically concludes, "What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

In other words, is important to look beyond the degree title, and examine the graduate's academic background. For instance, an MBA graduate might want to specialize in supply chain management if he or she wishes to work for a company with a large logistics and supply chain operation. Alternatively, a student will likely pursue a focus in finance if he or she wants to work as a senior financial analyst for a large accounting company. In cases where the coursework doesn't line up with the job duties, employers must examine the employee's work history to determine if there is enough progressively responsible experience in the field to qualify for the role.

The infographic outlines the likelihood of receiving an RFE from USCIS. It provides a simplified illustration of common scenarios where MBA graduates seek to qualify for a role that requires a degree in finance. As we move up the arrow, the level of scrutiny increases as the nexus between the candidate's education and the position's degree requirements becomes less apparent.

The first level illustrates the ideal H-1B petition, where the beneficiary's qualifications and academic requirements are in perfect alignment. The second and third levels are more nuanced, and illustrate the type of situations most MBA graduates face. They either have a specific MBA concentration related to the role, or possess progressively responsible experience in the field of study required for the role. It is thus incumbent upon the employer to examine the coursework to identify specific courses that are tailored to the H-1B role. The fourth level illustrates a scenario in which the candidate faces a high risk of denial due to his lack of expertise and education in a related field.

There's somewhat of a dualistic relationship that exists in every successful H-1B visa. On the one hand, the employee must have at least a bachelor's degree, or higher, or its equivalent in a specific specialty. At the same time, the position must require at least a bachelor's degree, or higher, or its equivalent in that specific specialty. As the road to H-1B sponsorship becomes increasingly challenging, U.S. employers seeking to sponsor MBA graduates should develop a keen eye for clearly articulating this relationship, and develop strategies for overcoming expected hurdles.

