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# H-1 quota - the law

## H-1 quota - the law <sup>[1]</sup>

Submitted by Chief Editor on Oct 8th 2008

### **ANSWER:**

People (even lawyers, including me) find it difficult to keep the H-1 quota issues straight. I am giving the law here for reference and better understanding.

The Law

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AC21

### SEC. 103. SPECIAL RULE FOR UNIVERSITIES, RESEARCH FACILITIES, AND GRADUATE DEGREE RECIPIENTS; COUNTING RULES.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following new paragraphs:

- `(5) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who is employed (or has received an offer of employment) at--
  - `(A) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity; or
  - `(B) a nonprofit research organization or a governmental research organization.
- `(6) Any alien who ceases to be employed by an employer described in paragraph (5)(A) shall, if employed as a nonimmigrant alien described in section 101(a)(15)(H)(i)(b), who has not previously been counted toward the numerical limitations contained in paragraph (1)(A), be counted toward those limitations the first time the alien is employed by an employer other than one described in paragraph (5).
- `(7) Any alien who has already been counted, within the 6 years prior to the approval of a petition described in subsection (c), toward the numerical limitations of paragraph (1)(A) shall not again be counted toward those limitations unless the alien would be eligible for a full 6 years of authorized admission at the time the petition is filed. Where multiple petitions are approved for 1 alien, that alien shall be counted only once.'

## Higher Education Act

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### § 1001. General definition of institution of higher education

(a) Institution of higher education. For purposes of this Act, other than title IV [20 USCS §§ 1070 et seq.], the term "institution of higher education" means an educational institution in any State that--

- (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
- (2) is legally authorized within such State to provide a program of education beyond secondary education;
- (3) provides 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;
- (4) is a public or other nonprofit institution; and
- (5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included. For purposes of this Act, other than title IV [20 USCS §§ 1070 et seq.], the term "institution of higher education" also includes--

- (1) any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a); and
- (2) a public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) List of accrediting agencies. For purposes of this section and section 102 [20 USCS § 1002], the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part H of title IV [20 USCS § 1099b], to be reliable authority as to the quality of the education or training offered.

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**Unless the context shows otherwise, all answers here were provided by [Rajiv](#) [4] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) [5]**

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