

ALERTS

Immigration Update

PREPARING FOR THE FY2009 H-1B CAP

MVA Immigration Team

01.15.2008

As a reminder, April 1, 2008 will be the first day USCIS will accept new petitions for *H-1B Professional Worker Visas*. USCIS has a cap of 65,000 H-1B visas (as well as an additional 20,000 for U.S. Masters degree holders), available per CIS fiscal year which runs from October 1 to September 30. April 1, 2008 is the first date that employers can petition for H-1B status for the upcoming fiscal year, which begins October 1, 2008.

Last year the H-1B Cap was met on April 1, 2007, the first day that the USCIS began accepting cases. A lottery was conducted to choose 65,000 cases for H-1B issuance from the more than 125,000 H-1B petitions received that day. The Master's degree cap was met by April 30, 2007. The expectation is that the FY2009 H-1B Cap will be exhausted on the first day of filing in 2008 and that a lottery will be conducted this year as well to choose H-1B petitions for adjudication. Current H-1B holders employed at for-profit companies have already been counted against the cap. Only foreign nationals changing from a different status or porting their H-1B from an exempt institution to a cap-subject institution must have their H-1B petition filed on April 1, 2008. If you are unsure if a potential hire's current H-1B is for an exempt institution, please let us know and we can advise accordingly.

Therefore, to the extent possible, MVA recommends that U.S. employers think ahead in terms of hiring needs. Now is the appropriate time to consider whether your company may be interested in offering a position to a foreign national professional worker or a foreign national currently employed pursuant to temporary employment authorization, such as Optional Practical Training or TN status under NAFTA. Some documentation must be acquired well in advance of the filing date, so please contact our office as soon as possible to initiate an April H-1B filing or to ask us to review credentials to determine a candidate's eligibility for an H-1B visa. Employers who miss the April 1st H-1B filing deadline may not be able to file for initial H-1B visas until April 1, 2009. Current clients can initiate new cases via our website.

We look forward to assisting your business with its immigration needs. Please do not hesitate to call or email your *MVA Immigration Team contact* with any questions you may have