

ALERTS

Immigration Update

APRIL 1ST FILING WINDOW FOR NEW H-1B VISAS IS QUICKLY APPROACHING

02.17.2010

As a reminder, April 1, 2010 will be the first day USCIS will accept new petitions for *H-1B Professional Worker Visas* for the upcoming fiscal year, which begins October 1, 2010. 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.

Last year the H-1B Cap was met on December 22, 2009. While we do anticipate a similar outcome for the upcoming fiscal year, it is important to file as soon as possible as there is no way to predict with certainty the outcome of this years cap filing. For fiscal years 2008 and 2009, the H-1B filings went into a lottery as more petitions were filed on April 1st than there were H-1B numbers available. Petitions not filed in the beginning of April those years were not eligible for the H-1B lottery. While it is not likely that the H-1B numbers will go to an immediate lottery again due to current economic conditions, it is possible.

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 a foreign student working under Optional Practical Training or TN status under NAFTA. 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 during the April 1, 2010 filing window.

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. 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. In addition, with the implementation of the new LCA process on May 15, 2009, the increased LCA processing time could significantly impact the expeditious filing of petitions for H-1B status. Please plan ahead to allow enough time for the LCA to be certified before the case must be filed. Employers who miss the April 1st H-1B filing deadline may not be able to file for initial H-1B visas until April 1, 2011 if all number are immediately exhausted. Current clients can initiate new H-1B 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.