

ALERTS

Immigration Update

NEW H-1B VISAS STILL AVAILABLE BUT FOR HOW LONG?

10.13.2011

Yesterday, U.S. Citizenship and Immigration Services (CIS) reported that as of October 7, 2011, it had received approximately 41,000 petitions against the 58,200 H-1B standard cap numbers available (6800 are reserved for Singapore and Chilean nationals but may be released if CIS anticipates they will not be used, as in previous years) and 19,100 petitions against the 20,000 cap exemption for foreign nationals holding U.S. advanced degrees. The agency will continue accepting H-1B filings for those who qualify and will be counted against the cap until they receive a sufficient number to meet the annual quota.

While H-1B numbers have been initially used much more slowly this year than in recent years, this has increased as we near the end of the calendar year as employers make decisions on retaining students completing their Optional Practical Training (OPT) and the award of new college degrees in December. Yesterday's announcement proved this to be true as more than 5,000 numbers were used in the last two weeks, more than in any two week period since the initial filing window opened in April. If H-1B numbers continue to be used at this rate, we anticipate the cap could be hit before year end. Also, the iCERT Labor Condition Application (LCA) system, a prerequisite for filing an H-1B petition, is now taking five to ten business days to certify LCA's needed for the H-1B filing.

As such, we recommend employers initiate the H-1B process now if they require an H-1B for a new worker or are considering transitioning an existing worker to an H-1B to allow for extensions during a lengthy Green Card process. In our experience, by the time CIS announces they are nearing the cap limit, it will be too late to acquire a certified Labor Condition Application from the Department of Labor and file the H-1B petition before the cap is hit. Persons currently in H-1B status who have been counted against the cap in previous years are not subject to the H-1B cap for extensions or changes in employers.

Any H-1B petition subject to the annual H-1B cap that is not filed before the current year's numbers run out can be filed on April 1, 2012, requesting an October 1, 2012 start date. At time of publication, the October 7th H-1B cap count update is the last one posted by USCIS. USCIS posts its most recent H-1B cap count [here](#).

To initiate a new H-1B cap-subject filing, please contact a member of the MVA Immigration Team.