

ALERTS

Immigration Update

01.14.2013

H-1B Filing Season Approaches

April 1, 2013 will be the first date that employers can petition for cap-subject H-1B status for FY 2014, which begins October 1, 2013. Similar to previous years, the H-1B quota for fiscal year 2014 will be limited to 65,000 (minus any numbers used for Singapore and Chilean nationals). An additional 20,000 numbers will be available for individuals who have earned a U.S. Master's or higher degree. Due to the improving economy and the fact that the quota was met last year in a mere 72 days, we anticipate that this year's H-1B quota will be met during the initial filing period from April 1, 2013 to April 7, 2013. In the event USCIS receives enough petitions to meet the congressionally mandated cap for the fiscal year, there will be a random selection ("lottery") process for cap subject H-1B cases in both the regular and U.S. advance degree categories. This means that petitions not selected will be returned and no new H-1B numbers will be available until the following fiscal year. The last time that the USCIS had to run a random selection process in the H-1B quota was in fiscal year 2009 when the USCIS received more than 165,000 petitions. If employers fail to file their H-1B quota petitions during the initial filing period of April 1, 2013 through April 7, 2013 and the H-1B quota is met during this initial filing period, the earliest date upon which employers will be able to file H-1B quota petitions will be April 1, 2014 requesting an H-1B employment start date of October 1, 2014. Prior to filing the petition with USCIS, the Department of Labor must certify the terms of employment. This process can take 2 weeks or longer during this busy filing periods. As such, we recommend you contact us as soon as possible about any potential cap-subject filings under next year's cap and at the very least no later than **February 15, 2013**.

H-1B visas allow foreign nationals to accept employment in the US in "specialty occupations"; those positions that generally require a US college degree (or equivalent knowledge) for entry into the profession. As a reminder, petitions filed by employers who are exempt from the cap, as well as petitions filed on behalf of current H-1B workers who have been counted previously against the cap within the past six years, will not count toward the 2013 H-1B cap. Students in F-1 status currently working pursuant to Employment Authorization Documents (EAD's) issued to them upon completion of their college degree requirements for optional practical training will need to convert to an H-1B visa prior to the end of their approved training period in order to maintain US work authorization. Foreign nationals on L-1 visas or in TN status may also need to convert to H-1B status to complete their Green Card process. Again, we recommend employers initiate the H-1B process now in order to ensure employees who need H-1B status have their petitions ready to file on April 1st.