

ALERTS

Immigration Update

PREPARING FOR THE FY2010 H-1B DEADLINE

MVA Immigration Team

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As a reminder, April 1, 2009 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, 2009 is the first date that employers can petition for H-1B status for the upcoming fiscal year, which begins October 1, 2009.

Last year CIS accepted H-1B petitions until April 7 to avoid the first-come, first-serve rush that typically occurred in the past on April 1. A lottery was then conducted to choose 65,000 cases for H-1B issuance from the more than 150,000 H-1B petitions received. The expectation is that the FY2010 H-1B Cap for Bachelor's degree holders will again be exhausted in early April and that a lottery will be conducted this year as well to choose H-1B petitions for adjudication. It is also anticipated the additional 20,000 for U.S. Masters degree holders be exhausted by mid-April.

Additionally the U.S. Department of Labor ("DOL") is currently reviewing its procedures with respect to how Labor Condition Applications ("LCAs") are filed and certified. A certified LCA is required for every H-1B petition and currently LCAs are certified immediately upon submission to the DOL's website. It is anticipated that DOL will change this process to require an officer to review every LCA, therefore increasing the certification time to 7-10 business days. These changes will in turn significantly impact how quickly H-1B petitions can be filed.

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, 2010. Current clients can initiate new cases via our website.

Please note that 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, 2009. If you are unsure if a potential hire's current H-1B is for an exempt institution, please call or email your *MVA Immigration Team contact* with any questions you may have.