

# ALERTS

## Immigration Update

### APRIL 1 DEADLINE FOR FISCAL YEAR 2010 H-1B LOTTERY FILING

MVA Immigration Team

03.03.2009

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 foreign nationals subject to the cap for the upcoming fiscal year, which begins October 1, 2009.

Last year the H-1B Cap was met on April 1, 2008, 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 130,000 H-1B petitions received that day. The Master's degree cap was also met on April 1, 2008 and a lottery was conducted for those 20,000 H-1B visas as well. The expectation is that the FY20010 H-1B Cap will be exhausted on the first day of filing in 2009 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 during the April 1, 2009 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.

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. 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.

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.