



March 11, 2011

Special Immigration Alert:

New H-1B Nonimmigrant Visa Season Starts April 1, 2011

Remember that all new H-1B petitions must be filed on March 31, 2011, to ensure that they are counted toward the 2012 H-1B cap.

The annual H-1B season has arrived! The federal government is authorized by statute to approve only 65,000 new H-1B visas each fiscal year, plus an additional 20,000 H-1B visas set aside for applicants who have master's degrees from accredited American universities. The federal government's fiscal year begins on October 1, but the governing regulations permit employers to apply for new H-1B non-immigrant visas up to six months in advance. Hence, the filing date is March 31, 2011.

For the past two years, the H-1B cap has not been met on the first day. Prior to that, the government received substantially more H-1B petitions than the quota allowed and conducted a "lottery" to determine the cases selected. The format for this lottery has varied and has not been announced for this year. Generally, the U.S. Citizenship and Immigration Service ("USCIS") logs new H-1B petitions according to the date on which they arrive. When the projected volume exceeds the quota, USCIS conducts a random lottery for all H-1B petitions properly filed on the date the quota was reached.

To avoid H-1B cap problems, employers are encouraged to review their current employee

rosters and potential new hires to identify possible H-1B candidates. Potential H-1B cap cases include F-1 students working on grants of Optional Practical Training (“OPT”), L-1B transferees in the green card process or who need the additional year here that the H-1B classification provides, or potential hires from cap-exempt organizations who will need new H-1B visas to work for “cap-subject” employers.

We cannot “guestimate” what the volume of H-1B petitions will be this year. We can say that the only way to ensure that your petitions are counted toward the 2012 H-1B cap is to file them on March 31, 2011, so they arrive at USCIS on April 1, 2011, and are included in a possible random lottery.

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