



March 21, 2011

## **Special Immigration Alert:**

### **USCIS Announces Policy Review on H-1B Cap Exemptions Based on Relation or Affiliation**

On March 16, 2011, the U.S. Citizenship and Immigration Services (“USCIS”) announced that it is currently reviewing its policy on H-1B cap exemptions for nonprofit entities that are related to, or affiliated with, an institution of higher learning. *Effective immediately*, and as an interim measure, the USCIS will approve H-1B nonprofit entity petitions seeking an exemption from the H-1B numerical cap and filing fees based on affiliation with, or relation to, an institution of higher learning as long as the petitioning entity can demonstrate that: (1) it has secured prior approvals for similar petitions since June 6, 2006; and (2) there has been no material change in circumstances. These interim procedures are temporary and will remain in place until the USCIS releases additional guidance.

This H-1B cap-exemption issue has been a continuing concern in many industries but is particularly worrisome for medical schools, teaching hospitals, and the general hospital community. These organizations have historically relied on this H-1B cap exemption to secure H-1B visas for foreign researchers, scientists, physicians, clinical residents and fellows, faculty, and allied health professionals. Recently, however, the USCIS started applying a stricter reading of the cap-exemption requirements and began issuing Requests for Evidence (“RFEs”) in these cap-

exemption cases. Such RFEs challenge the petitioning entity's affiliation with medical schools or academic universities, and demand extensive documentation regarding the claimed affiliation and the participation of the petitioning entity in medical education and scientific and clinical research. Through these RFEs, the USCIS injected substantial uncertainty into medical school and hospital programs that rely on an H-1B cap exemption for continued operation.

We cannot estimate when the USCIS will complete its policy review. The USCIS's interim measure is a welcome sign for medical school and hospital programs that will begin on July 1, 2011, because it resolves, at least for now, the immediate uncertainty surrounding the H-1B cap-exemption issue for foreign national participants.

For more information or questions regarding the above, please contact:

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