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USCIS CONTINUES TO ACCEPT FY 2010 H-1B PETITIONS

Posted on April 8, 2009 by Cyrus Mehta

CDMA Update: *The good news is that the USCIS did not receive more than the allotted number of H-1B visas under either the 65,000 H-1B cap or the 20,000 Master's cap as of April 7, 2009, which was the last day of the 5 day filing window. This window would allow all H-1B petitions received during April 1-7 to be treated equally under a randomized selection in the event that the USCIS received more than 65,000 or 20,000 during this window. Hence, employers can continue to file H-1B petitions with an October 1, 2009 start date until the USCIS announces the "final receipt date," which is when the respective 65,000 or 20,000 caps would have been met. Still, it is important that employers continue to file complete, detailed and thorough H-1B petitions. Winning a request for H-1B classification has become more difficult in recent times, and employers must take pains to demonstrate that the position is a "specialty occupation," which is an occupation that requires the minimum of a bachelor's degree in a specific specialty or its equivalent pursuant to Section 214(i) of the Immigration and Nationality Act. In the case of a consulting company, where the H-1B worker will be assigned to third party client sites, the employer must further establish that the position is not speculative and that it will be able to employ the H-1B worker, at the very outset, in a specialty occupation.*

The USCIS press release is reproduced below:

WASHINGTON - U.S. Citizenship and Immigration Services (USCIS) today announced it continues to accept H-1B nonimmigrant visa petitions subject to the fiscal year 2010 (FY 2010) cap. USCIS will continue to monitor the number of H-1B petitions received for both the 65,000 regular cap and the 20,000 U.S. master's degree or higher
educational exemption cap.

Should USCIS receive the necessary number of petitions to meet the respective caps, it will issue an update to advise the public that, as of a certain date (the "final receipt date"), the respective FY 2010 H-1B caps have been met. The final receipt date will be based on the date USCIS physically receives the petition, not the date that the petition is postmarked. The date or dates USCIS informs the public that the respective caps have been reached may differ from the actual final receipt date.

To ensure a fair system, USCIS may randomly select the number of petitions required to reach the numerical limit from the petitions received as of the final receipt date. USCIS will reject cap subject petitions that are not selected, as well as those received after the final receipt date.

Petitions filed on behalf of current H-1B workers, who have been counted previously against the cap, will not count toward the congressionally mandated FY 2010 H-1B cap. Therefore, USCIS will continue to process petitions filed to:

* Extend the amount of time a current H-1B worker may remain in the United States.

* Change the terms of employment for current H-1B workers.

* Allow current H-1B workers to change employers.

* Allow current H-1B workers to work concurrently in a second H-1B position.

H-1B in General

U.S. businesses use the H-1B program to employ foreign workers in specialty occupations that require theoretical or technical expertise in fields, such as scientists, engineers, or computer programmers.

UPDATE: April 8, 2009, 6 pm EST

AILA reports that it has been informed by the USCIS that it received almost half the petitions needed to meet the FY 2010 cap. USCIS further reports that it has received "just short of the 20,000 needed to reach the Masters cap."

The 15-day clock for Premium Processing, according to the USCIS, will start on April 7, 2009. USCIS will generate receipts as of April 8, 2009.

USCIS previously erroneously issued receipts for H-1B cap cases. These receipts will now remain valid since all petitions received thus far will be counted towards the H-1B cap. Unquote

UPDATE: April 9, 2009, 3 pm EST

SCIS Updates Count of FY2010 H-1B Petition Filings

WASHINGTON - U.S. Citizenship and Immigration Services (USCIS) today announced an updated number of filings for H-1B petitions for the fiscal year 2010 program.

USCIS has received approximately 42,000 H-1B petitions counting toward the Congressionally-mandated 65,000 cap. The agency continues to accept petitions subject to the general cap.

Additionally, the agency has received approximately 20,000 petitions for aliens with advanced degrees; however, we continue to accept advanced degree petitions since experience has shown that not all petitions received are approvable. Congress mandated that the first 20,000 of these types of petitions are exempt from any fiscal year cap on available H-1B visas.

For cases filed for premium processing during the initial five-day filing window, the 15-day premium processing period began April 7. For cases filed for premium processing after the filing window, the premium processing period begins on the date USCIS takes physical possession of the petition.

USCIS will provide regular updates as the processing of FY2010 H-1B petitions continue.