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Immigration eNews

FEBRUARY 16, 2006

No April Fools! Don't Let Your Employees be Victims of the H-1B Cap

April 1, 2006 is fast approaching. It is the first day employers may file H-1B petitions with the United States Citizenship and Immigration Service (USCIS) on behalf of foreign nationals who need H-1B status with a start date of October 1, 2006, which would include individuals who have never had H-1B status before, those who once had H-1B status but have left the U.S. for one year or more, and most commonly students in J-1 or F-1 status.

The federal government's 2007 fiscal year commences on October 1, 2006; an H-1B petition may be filed with the USCIS no earlier than six months prior to the requested start date; therefore, H-1B petitions may be filed on April 1, 2006 requesting a start date of October 1, 2006.

Last year, the annual cap of 58,200 available H-1B numbers was reached in record time-- on August 10, 2005. Accordingly, even if a student has Optional Practical Training and a valid Employment Authorization Document (EAD) until May 2007, an employer still needs to seriously consider filing an H-1B petition on the student's behalf as soon after April 1, 2006 as possible. If an employer waits too long to file an H-1B petition on behalf of a student who has an EAD valid until May 31, 2007 and is caught outside of the 2007 H-1B cap, the employer will then have to wait until April 1, 2007 to file an H-1B petition (seeking an October 1, 2007 start date). The student in this situation would not be eligible to work from June 1, 2007 through September 30, 2007. While filing early for H-1B status may result in the loss of a student's Optional Practical Training time under an EAD, the employer can avoid a situation where the employee may have to stop working for several months and might even have to leave the U.S. for some period of time.

President Calls on Congress to Raise H-1B Cap

During his February 2, 2006 speech at the 3M Corporate Headquarters, President Bush called upon Congress "to be realistic and reasonable and raise the H-1B cap." The President called for recognition that there are many brilliant engineers, chemists and physicists that are either educated in the U.S. or received education elsewhere but want to work in the U.S., and that it is a

mistake to limit the H-1B visa numbers for such jobs which are difficult to fill.

State and Local Immigration Law Enforcement

As reported in a recent Wall Street Journal article, federal immigration laws are increasingly becoming enforced at the state and local levels. Many counties and states have started verifying individuals' immigration status when they are stopped for traffic infractions and other violations. Border states such as Texas and California, as well as areas in New England and the Midwest, have made requests to Immigration Customs Enforcement for training on immigration law enforcement.

Decrease in Demand for Visa Numbers for Employment-Based Adjustment of Status Cases

The U.S. Department of State (DOS) has advised the American Immigration Lawyer's Association that it has seen a decrease in the demand for employment-based visa numbers for adjustment of status cases (I-485 cases). This has resulted in the rapid advancement of the established cut-off dates. The DOS does not want to be in a position where there are large amounts of numbers available for use late in the fiscal year and not enough time to make use of them so it is likely that numbers will continue to progress. However, when/if the demand does materialize it may be necessary to hold or retrogress (at some point) those dates. Information regarding the DOS's cut-off dates can be found in its monthly Visa Bulletin at http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html. This Visa Bulletin and the cut-off dates it contains indicate whether or not an individual is immediately eligible to apply for permanent residence (file an I-485 application or for an immigrant visa).

President Announces American Competitiveness Initiative During State of the Union Address

During the January 31, 2006 State of the Union address, President George Bush called for a temporary worker program and increased border security, as he also did in his speech last year. This year, however, he offered indirect support for efforts to recruit and retain highly skilled foreign workers when he announced his American Competitiveness Initiative. Although the President did not overtly mention these workers during his speech, the White House's press release on the initiative notes that "The President supports attracting and retaining the best and the brightest high-skilled workers from around the world by reforming the Nation's immigration system, while maintaining national security priorities."

Comprehensive Immigration Reform - Senate Judiciary Committee Must Deal with 11 Million Undocumented

The Senate Judiciary Committee is expected to begin taking action on immigration reform legislation on March 2, 2006, a process likely to take several weeks to complete. In the interim, Senate Judiciary Committee staff continues to negotiate the contours of a "Chairman's Mark," the legislation crafted by Judiciary Committee Chairman Arlen Specter that will likely serve as the base bill for Committee consideration. While there are several major reform proposals currently on the table in the Senate, "Chairman's Mark" contains elements of the three other major proposals.

It is expected that a bill approved by the Judiciary Committee would: 1) create legal channels for those who want to come and contribute to this country; 2) unveil the undocumented workers and provide them with an opportunity to earn the privilege of legal status; and 3) eliminate the

multi-year backlogs in family immigration.

Representative John Boehner Is House Majority Leader

Representative John Boehner succeeded in winning the position of House Majority Leader. On immigration, Rep. Boehner was one of the few Republicans who opposed Rep. James Sensenbrenner's anti-immigration bill. Rep. Boehner's win possibly signals a change in the House leadership's position on immigration.



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