
Time to Start Thinking About H-1B Visas Again

2008-01-24

As the presidential candidates continue to debate issues such as the economy, the war in Iraq and how to stop illegal immigration, it is becoming crystal clear that, given the political climate, there will be no political solution to the H-1B crisis for fiscal year 2009. That means employers should start planning for their hiring needs now in order to be prepared to file H-1B applications on Tuesday, April 1, 2008.

In fiscal year 2008, the US Citizenship and Immigration Services (USCIS) received approximately 120,000 H-1B petitions on the first date it accepted petitions for the 65,000 visas allocated for H-1B temporary work visas. As a result, the USCIS stopped accepting applications and instituted a random computerized selection process for the 65,000 available H-1B visas. In addition, the separate allocation of 20,000 cap-exempt H-1B visas set aside for individuals with master's or higher degrees from US universities was exhausted on April 30, 2007--a mere four weeks after USCIS began accepting applications.

As we expect the fiscal year 2009 cap to be exhausted as soon as it opens, requiring yet another lottery process, now is the time to plan for filing H-1B petitions for fiscal year 2009. This would include applications for new hires and former students currently on OPT or CPT work authorizations, as well as for any employees currently authorized to work in a visa status that does not allow immigrant intent, if the employer plans to sponsor the employee for permanent residency before October 2009.

We recommend filing all H-1B petitions on the very first possible date, as the 2009 visa allocation set aside for persons with US master's degrees may be exhausted immediately. The first date a petition may be filed for next fiscal year is April 1, 2008, six months in advance of October 1, 2008, the date the individual can begin working on the H-1B visa. This deadline applies only to new H-1B petitions. Petitions by institutions of higher education or related or affiliated nonprofit entities, nonprofit research organizations or governmental research organizations are also cap exempt.

Because of the strict time constraints associated with filing H-1B petitions, employers needing advice regarding filing H-1B petitions for fiscal year 2009 should contact counsel as soon as possible to make sure that all employment and employee retention needs will be met.

For more information on this or other immigration matters, please contact the authors listed above.