

USCIS Makes Sweeping Changes to the Implementation of the H-1B Visa Reform Act

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In a move that baffles the entire immigration community, the US Citizenship and Immigration Services (USCIS) announced on March 4, 2005, it is instating a series of policies that change the way the H-1B Visa Reform Act—enacted by Congress as part of the Omnibus Appropriations Act—will be administered for fiscal year 2005 (FY05). An effective date of March 9, 2005, was originally set for this legislation. The USCIS stated it will not accept H-1B petitions for workers who would benefit from the new legislation until the filing date, set forth in yet-to-be-published regulations. In essence, the USCIS will not accept applications for additional 2005 H-1B petitions until a date it has yet to determine.

In addition, the USCIS announced on March 8, 2005, that it intends to apply the newly available petitions for FY05 to **all** qualified H-1B nonimmigrant aliens, and will not limit those petitions to foreign nationals holding a master's degree or higher from a US institution of higher learning, as was specified in the legislation. These 20,000 additional visas, which many potential employers of foreign nationals with advanced degrees were relying on, will now, in addition to becoming available later than expected, no longer be reserved for the legislated use. As a result, all employers with FY05 H-1B needs will have to compete for the new visas, which will likely be depleted soon after the filing date, when one is established.

To deal with this change, employers with H-1B needs for the remainder of FY05 (which began on October 1, 2004) should prepare for and be ready to file their H-1B petitions as soon as the filing date is published. After the 20,000 H-1B petitions are exhausted, any new H-1B petitions issued must have a start date of or after October 1, 2005. Employers may begin to apply for H-1B visas for FY06 (which begins October 1, 2005) on April 1, 2005.

For more information regarding visa options for foreign national employees, contact either of the attorneys listed above.