

Update on H-1B Visa Availability

December 21, 2010

As the first quarter of the government's fiscal year 2011 closes, United States Citizenship and Immigration Services (USCIS) has updated its count of available new H-1Bs, our most basic professional work visa. USCIS announcements show a waning availability of the visas, prompting concern among employers that the H-1B visa program will soon be inaccessible until October 2011. USCIS announced that as of December 17, 2010 the Service had approved 19,700 of the 20,000 U.S. Master's degree allocation, and had approved 53,900 of the available 65,000 H-1Bs (less a small number of H-1Bs allocated specifically to nationals of Chile and Singapore). **For employers, this means that fewer than 12,000 new H-1Bs may be utilized for the rest of the fiscal year, which lasts until September 30, 2011.**

Last fiscal year was the first in several years where any H-1Bs were available on October 1st. During the recent past, demand for this work visa has vastly outpaced the limited supply, resulting in a lottery for the available supply taking place in the first week that petitions could be filed. Petitions normally can be filed only six months prior to the expected start date, and thus H-1B petitions typically were filed (and maximum slots exhausted) on April 1st – six months prior to the start of the government fiscal year on October 1st. The under-use of the H-1B category in the past two fiscal years is attributed generally to the economic decline, and particularly to the weak job market. As the job market has marginally improved, usage of the H-1B category also has gained speed. Many commentators believe the remaining new H-1B visas will be exhausted during the month of January. The filing period for the new supply of H-1B visas that will become available in October 2011 will take place the first five business days of April 2011, April 1st through April 7th.

As background, current immigration law contains a “cap” of 65,000 new H-1B approvals each fiscal year, of which up to 6,800 are set aside for the H-1B1 visa program under the U.S.-Chile and U.S.-Singapore Free Trade Agreements. Because so few of the Chilean and Singaporean H-1B1s are utilized, the vast majority of those set aside are utilized for the standard H-1B cap. In addition to the standard H-1B cap pool, the H-1B Visa Reform Act of 2004 makes available 20,000 additional H-1B numbers for foreign workers with a master's or higher degree from a U.S. academic institution. The following are not subject to the cap: H-1B petitions for amendment or extension of status, including new employers, and requests for concurrent H-1B employment; petitions filed by exempt organizations, including institutions of higher education, nonprofit research organizations or entities related or affiliated with an institution of higher education, or a nonprofit research organization or governmental research organization; H-1B petitions for J-1 nonimmigrants who received a waiver of the two-year foreign residency requirement based on certain interested state or federal agency requests; and H-1B petitions for beneficiaries who were counted against the cap within the preceding six years, unless the beneficiary is entitled to, and requests, a new six-year period.