

H-1B Cap and Immigrant Quota Backlog Relief Being Considered on the Senate Floor: *Your Supporting Action Needed Now*

In an encouraging effort to address both the unavailability of H-1B nonimmigrant visas and mounting backlogs for employment based permanent residence preference categories, on October 31st the U.S. Senate began consideration of a proposal that would make significant changes to both programs and provide much-needed relief. The proposal originated with Senate Judiciary Committee, and is included as Title VIII in S.1932, an omnibus budget reconciliation bill.

Following are the important elements:

- § Recapture of approximately 300,000 unused H-1B visas dating back to 1991, to be open for use in new petitions above the regular annual numerical cap at a rate of 30,000 per year.
- § Immediate recapture of an estimated 90,000 unused employment based-visas from prior years.
- § Exemption of spouses and minor children from counting against the annual employment-based immigrant preference category numerical limits. Estimates are that this would increase the available employment-based immigrant visas by 80,000-90,000/year.
- § Permit individuals to file applications for adjustment of status before an immigrant visa is actually available to them. Among other things, this would eliminate the need to apply for continuing H-1B extensions, permit immediate family members to obtain employment authorization, and help to address the issue of children “aging out”.
- § In exchange for these benefits, the proposal would add certain new filing fees, including a \$500 fee on employment-based preference petitions, a \$500 fee on petitions for one of the “recaptured” H-1B visas, and a \$750 fee on L-1 petitions.

The Senate will be debating S.1932 through at least the end of this week. After the bill passes the Senate it will go to a House-Senate conference committee to resolve differences with the House budget reconciliation bill, which does not contain helpful immigration provisions.

For employers that utilize the legal employment-based immigration system, this is an incredibly important piece of legislation. It is imperative that interested employers take affirmative steps to support this legislation through their elected representatives in Washington. Now may be the only opportunity to secure these positive changes. To make them happen there must be a strong, effective, immediate campaign of focused support. We are asking all concerned employers who want to see relief from the H-1B cap and relief for severely backlogged employment based permanent residence to stand up and be heard by taking the following 3 actions:

1. Please read and get back to us to add your company’s name to the attached “sign-on” statement, which has been prepared by a national coalition of supporters (organized by various business and trade associations) and will be presented to all members of Congress

after the close of business Friday, November 4, 2005. We are working closely with the letter's organizers to gather a broad show of support. Contact one of us at the Foley Hoag LLP Immigration Practice Group by 12:00 noon on Friday, and we will have your company's name included in the final list presented to Congress.

2. Contact your Senators and Congressperson directly to express support of this legislation. Tell them how your company and its employees are impacted by H-1B unavailability and by years-long waiting times for permanent residence. Ask them to support the provisions of Title VIII, particularly Section 8001, entitled "Recapture of Unused Visa Numbers," in S.1932, the Deficit Reduction Omnibus Reconciliations Act of 2005, on the Senate floor and in the House-Senate conference committee. The simplest way to make this contact is to use the on-line "Contact Congress" Alert function, located [here](#). Follow the prompts to create a personalized message or use the suggested text. Or, you can find more direct contact information on the web sites of your Senators and Congresspersons through <http://www.senate.gov> and <http://www.house.gov>.
3. Be prepared to help further when the bill goes to House-Senate conference, if your Congressperson or Senator is appointed to the conference committee. We will contact you if more direct support is needed at that time.

Thank you for your help. If you have questions please feel free to contact a member of the Foley Hoag LLP Immigration Practice Group.

Kevin J. Fitzgerald	617.832.1122 kfitzgerald@foleyhoag.com
George N. Lester	617.832.1212 glester@foleyhoag.com
Punam Rogers	617.832.1207 progers@foleyhoag.com