

## **H-1B Filing Deadline for FY 2010 is Fast Approaching and Stimulus Package Imposes New Restrictions on Hiring Foreign Workers**

*February 23, 2009*

On April 1, 2009, the U.S. Citizenship and Immigration Services ("USCIS") will begin accepting new H-1B petitions for employment commencing on October 1, 2009. For most employers, new H-1B petitions are subject to an annual limit of 65,000 new H-1B visas. An additional 20,000 visas are available each year to foreign workers with an advanced degree from a U.S. academic institution. The annual quota only applies to new H-1B visas, not to individuals who already hold H-1B status. Foreign nationals who work at universities and non-profit research organization are also excluded from the numerical cap.

Last year, the H-1B cap was reached immediately and we anticipate that, despite the economic downturn, USCIS will once again reach the cap when the new filing period opens on April 1. If USCIS receives more petitions than there are available numbers, it will hold a lottery to determine which cases may proceed to be adjudicated. Employers should evaluate their H-1B visa needs now so that any petitions will be ready for filing on April 1.

An additional consideration is that the new stimulus package, the American Recovery and Reinvestment Act of 2009, makes it more difficult for companies receiving funds from the Troubled Asset Relief Program (TARP) to hire foreign workers under the H-1B visa program. Such companies must now comply with specific recruitment provisions, which in the past were only imposed upon H-1B dependent employers.

Finally, in evaluating their needs, employers should consider filing an initial H-1B for current employees or potential new candidates working on another type of work visa, such as students (F-1/OPT), exchange visitors (J-1), intra-company transferees (L-1), NAFTA professionals (TN), Australian Free-trade professionals (E-3), or Treaty Investor/Traders (E-1/E-2).

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