

H-1B Numbers Going Fast for 2005 – Cap Almost Reached

The United States Citizenship & Immigration Services (USCIS) has announced that as of August 4, 2004, a total of 40,000 H-1B petitions subject to the USCIS fiscal year 2005 H-1B quota have been received (according to the American Immigration Lawyers Association). Of these 40,000 petitions, 21,000 have been approved, and the remainder are pending adjudication. This quota is referred to as the “H-1B cap.”

For USCIS fiscal year 2005 (October 1, 2004 to September 30, 2005), 65,000 H-1B visas/petition approvals are available for new cases. While 6,800 of these are reserved for citizens of Chile (1,400) and Singapore (5,400) each year, the visas that were not approved during USCIS fiscal year 2004 from the reserved 6,800 H-1B visas/petitions will carry forward temporarily into USCIS fiscal year 2005.

Advance planning is certainly in order for many employers and individuals. In general, new cases subject to the H-1B cap can be filed for individuals who have not held H-1B status within the last year and who are outside of the U.S., or who are within the U.S. in another nonimmigrant classification such as TN (NAFTA professionals), F-1 (students) and J-1 (exchange/trainees), among others. There are many exceptions to this general rule, including most changes of employer for individuals currently holding H-1B status or extensions of H-1B stay.

Employers and foreign nationals should review their individual circumstances with counsel to determine whether an H-1B petition to be filed with USCIS is subject to the quota.

For Further Information

If you have any questions regarding changes in the law and agency practices, including how these changes may affect your business, or if you would like to discuss how to hire and retain foreign nationals on your workforce, please contact one of the members of the Immigration Group below or the lawyer in the firm with whom you are regularly in contact.

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