

CLIENT ALERT

APRIL 1 FILING DATE FOR H-1B CAP SUBJECT PETITIONS IS FAST APPROACHING

February 8, 2010

On April 1, 2010, employers will once again be able to submit cap-subject H-1B petitions with the United States Citizenship and Immigration Services (USCIS) for its Fiscal Year 2011. The cap for the FY 2010 was reached in December 2009, which means that April 1, 2010 is the earliest that "cap-subject" petitions can be filed. If a foreign national is the beneficiary of a "cap subject" petition, the earliest date on which he or she might begin employment is October 1, 2010. Employers who are recruiting from abroad or who have hired individuals on F-1 "Optional Practical Training," and therefore anticipate a need to file an H-1B petition, should be prepared to have that petition delivered to USCIS on April 1, 2010.

The H-1B Cap

Under the immigration law, the number of H-1Bs available per USCIS fiscal year is limited to 85,000 -- 20,000 of which are reserved for holders of Master's or higher degrees from US universities. This number is reduced by an allocation of 6,800 of those available 85,000 H-1Bs to nationals of Chile and Singapore.

What are "Cap-Subject" H-1B Petitions

Petitions are only subject to the FY2011 cap if the foreign national beneficiary of that petition has not previously been counted against a cap. Thus, "new" H-1B petitions are cap subject, while most petitions for extension, change of employer or concurrent employment are not impacted by the H-1B cap. Further, petitions on behalf of foreign nationals to be employed by institutions of higher education (or related or affiliated nonprofit entities), non-profit research organizations or governmental research organizations are not subject to the cap, but if an employer wishes to hire an H-1B employee currently employed at such an organization, the new petition would be subject to the cap.

H-1B Lottery?

Though a lottery was not required for FY2010, in recent years the USCIS has received in excess of 65,000 petitions on the April 1 filing date, requiring USCIS to employ a lottery system to determine which petitions would be retained and adjudicated. It is anticipated that the demand for H-1Bs will increase somewhat this year, making early identification of H-1B petitions and filing by April 1, 2010 the best course of action for employers.

Next Steps for Employers

Employers should take a look at their current workforce to see if any current employees, working pursuant to either F-1 Optional Practical Training or some other expiring status, would benefit from an H-1B

petition. In light of the anticipated demand and timing issues created by the use of the new iCERT system for related labor condition applications, it is advised that preparation of cap-subject H-1B petitions begin immediately.

At **Klasko, Rulon, Stock & Seltzer, LLP**, our experienced business immigration lawyers and team of professionals assist businesses around the country in preparing H-1B petitions and offer sound advice, policies and programs to ensure full compliance with federal laws and regulations.

WEBINAR: We will be hosting a free webinar on **Wednesday, February 17** at 1pm to discuss the April 1 filing date for H-1B cap subject petitions. For more detailed information, click [here](#). Look for registration information for this webinar in your "In Box" soon.