LATEST H-1B CAP COUNT
As of May 25, 2012, USCIS announced receipt of 48,400 regular cap petitions and 17,500 Master’s degree exempt petitions. Employers are urged to move as quickly as possible to file H-1B petitions for foreign professional candidates who are subject to the H-1B cap who they hope to place in the coming year ahead. It is impossible to predict when the H-1B cap will be reached. In prior years, USCIS has given little or no notice before the cap was reached, leaving some clients who wanted or needed H-1B visas out of luck. We recommend that you review all new hires that hold F-1 or J-1 status and consider filing H-1B visa petitions immediately. Waiting until the last opportunity to apply can lead to significant delays and disappointment if you miss out on the available H-1B visas. Once cap-subject H-1B visa numbers are exhausted, employers will be unable to hire new foreign workers in H-1B status until October 1, 2013.

USCIS will continue to accept cap-subject petitions until it is determined that the visa numbers have been exhausted. As described by USCIS, this date is known as the final receipt date. If USCIS receives more petitions than it can accept on the final receipt day, it may randomly select the petitions that will be considered for final inclusion within the cap. USCIS will reject petitions that are subject to the cap and are not selected, as well as petitions received after the final receipt date.

Cap-subject petitions means any individual who was not previously counted against the cap. This typically refers to individuals who have never held H-1B status or have not been in the US in H-1B status for more than a year. Individuals who are in the US but often times have not previously held H-1B status and who may be “shut out” once the cap is reached include L-1s, J-1s, F-1s, and E visa holders. Please keep in mind that some H-1B nonimmigrants have not been counted against the cap—these are individuals who work for cap-exempt employers such as universities and not-for profit research institutes.

Please contact your Jackson & Hertogs attorney if you have questions about this year’s H-1B visa cap.
**USCIS NEWS (cont’d)**

**DELAY IN ISSUANCE OF I-129 RECEIPTS BY USCIS**
USCIS has announced delays in issuing receipt notices for I-129 petitions filed recently. Normally, receipts are issued within two weeks after the petitions are received by the USCIS. However, due to the heavy volume of I-129 petitions filed recently, the USCIS announced that it may take them an additional two to four weeks to issue receipt notices.

**EMPLOYER RESOURCE: I-9 CENTRAL**
J&H reminds employers of the USCIS online resource center for the Form I-9, Employee Eligibility Verification. Launched a year ago, the free website provides employers and employees with one-click access to resources, tips, and guidance to properly complete Form I-9 and better understand the Form I-9 process. Topics include completing & correcting the Form I-9, acceptable documents, and information on retention and storing of the Form I-9. J&H encourages employers to visit the site to review completing the Form I-9. Visit I-9 Central at www.uscis.gov/I-9central.

**USCIS LAUNCHES ELIS**
On May 22, 2012 USCIS launched the first phase of its electronic immigration benefit system known as USCIS ELIS. Using the online system, individuals can create a USCIS ELIS account and apply online to extend or change their nonimmigrant status for certain visa types. In the initial release, applicants can electronically file the Form I-539 which can be used to extend or change status to B-1, B-2, F-1, J-1, or M-1. Future releases are expected to add more form types. For more information, see: http://www.uscis.gov/uscis-elis.

**E-REQUEST NOW INCLUDES ERROR REPORTING**
e-Request is a web-based tool that allows an inquiry to be placed with USCIS for certain applications and petitions. Inquiries can be made on selected forms that are beyond posted processing times or selected forms where you did not receive an Application Support Center (ASC) appointment notice or other notice.

Effective May 11, 2012, USCIS e-Request will allow customers to notify USCIS of typographical errors on their immigration benefit documents (e.g., employment authorization documents, permanent residence cards) and customers will be able to inquire about Application Support Center appointments not received for I-90 and N-400 applications.

**PREPARING FOR THE NATURALIZATION TEST**
USCIS and the National Museum of American History have launched a web-based tool to assist with preparing for the civics portion of the naturalization test. Preparing for the Oath: U.S. History and Civics for Citizenship is an interactive online resource that presents videos and activities that showcase artifacts from the Smithsonian Institution’s collections and exhibitions and features the 100 questions and answers from the naturalization test. Those preparing for the naturalization test can access the features at: http://americanhistory.si.edu/citizenship/

**DHS NEWS**

**EXPANSION OF STEM DEGREE FIELDS**
On May 11, 2012, DHS announced an expanded list of science, technology, engineering and math (STEM) designated degree programs that are available for extension of optional practical training (OPT) for eligible students.

The expanded STEM list now includes programs such as pharmaceutical sciences, human biology, and econometrics and quantitative economics. The expanded list also makes available degree programs with CIP (Classification of Instructional Program) codes ending in “99“. Such codes were not previously eligible under the 2008 DHS final rule, but with their addition, students in emerging fields will be able to take advantage of a STEM extension.

Under the OPT program, international students who graduate from colleges and universities in the United States are able to remain in the country and receive training through work experience for up to 12 months. Students who graduate from a designated STEM degree program can remain for an additional 17 months on an OPT STEM extension.

The full list of STEM degree programs can be found here: http://www.ice.gov/sevis/stemlist.htm
The Department of State (DOS) published data on how it estimates the total number of visas for each employment preference category during the Fiscal Year (FY).

“Each month, the Visa Office subdivides the annual preference and foreign state limitations specified by the INA into monthly allotments based on totals of documentarily qualified immigrant visa applicants reported at consular posts and CIS Offices, grouped by foreign state chargeability, preference category, and priority date. If there are sufficient numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered "Current." Whenever the total of documentarily qualified applicants in a category exceeds the supply of numbers available for allotment for the particular month, the category is considered to be "oversubscribed" and a visa availability cut-off date is established. The cut-off date is the priority date of the first documentarily qualified applicant who could not be accommodated for a visa number. For example: If the monthly target is 3,000 and there is only demand for 1,000 applicants, the category will be "Current". When there is demand for 8,000 applicants, then it would be necessary to establish a cut-off date so that only 3,000 numbers would be allocated. In this case, the cut-off would be the priority date of the 3,001st applicant.”

The Fiscal Year 2013 opens on October 1, 2012 and it is expected there will be a return of a priority date for China- and India-born in the EB2 category to May 1, 2010. DOS also predicts that it may become necessary to establish a cut-off date for the EB1 category and the EB2 category for all countries other than China and India.
CBP NEWS

SUMMER TRAVEL ADVISORY

With summer coming up, your employees may be planning travel outside the United States to see friends or family, in addition to perhaps making business visits. Before flight plans are firmed up, now is the time to review the expiration of all U.S. government-issued travel documents, so as to ensure your employee’s safe return to the United States.

We have prepared the following checklist of issues for you to share and review with your foreign national employees before they make summer travel plans. Should you have any questions about these matters, do not hesitate to contact your attorney at J&H.

√ Check documents for continued validity/expiration.

Passport, nonimmigrant visa (e.g., H-1B or L-1 visa), and I-94 card should be reviewed for both the employee and any spouse or children also traveling. In most cases it is required that the I-94 card be surrendered upon departure from the U.S. (Canadians citizens holding TN status are exempt). However the I-797 petition approval notice should not be surrendered. Upon return to the U.S., present the I-797 (“Notice of Action”) petition approval notice and nonimmigrant visa.

The nonimmigrant visa stamp must remain unexpired not only at the time of departure from the U.S., but also for a meaningful period of time after the planned return date. Any trips to Canada or Mexico lasting less than 30 days will not require a visa for return to the United States. However, if an application for a visa is made in Canada or Mexico, and the visa application is subsequently denied or delayed, return to the United States with just the I-797 approval notice will not be available.

All passports must be valid for at least six months beyond the approved period of stay in the United States. If a passport will not be valid for the full period of authorized nonimmigrant stay, a new passport should be obtained prior to the trip. Otherwise, there is a chance the U.S. Customs & Border Protection officer may “short change” the period of authorized stay upon return to the United States, and fail to give the full period of stay.

√ Book visa appointment to get a new visa.

Unless the employee is exempt from the visa requirements (i.e., is a Canadian citizen not entering as an E-2 nonimmigrant), if s/he has neither a nonimmigrant visa for his/her current employment category, or has a previously-issued but expired nonimmigrant visa, a new visa stamp must be obtained. There are specific exceptions for individuals who will travel to Canada/Mexico for less than 30-days and who can return to the U.S. using a valid Form I-94 with an expired visa stamp. Information regarding “automatic” revalidation can be found on our website at: http://www.jackson-hertogs.com/?page_id=5663.pdf. If a visa is required, the visa must be issued prior to returning to the United States. U.S. Consular appointments are required to obtain a visa and should be booked as early as possible, even if the planned trip is not for several weeks, due to high demand for appointments during summer travel months.

The consular appointment does not necessarily have to be made in the applicant’s “home country”. Appointments may be available in Canada or Mexico, or even in other countries, depending upon the circumstances. Please check the specific information for different U.S. consulates around the world by visiting the U.S. State Department website (http://usembassy.state.gov/). Also, once an individual applies for a visa as a Third Country National (TCN) in Canada or Mexico, s/he is no longer able to avail him/herself of the above mentioned travel using only the Form I-94 but must wait until the visa application is adjudicated. Lastly, before planning travel to a country of which the individual is not a citizen or permanent resident, the individual should determine what visa requirements exist for entry into the target country.

√ Beware of security clearance checks.

Security clearance checks can delay visa applications at any U.S. consulate. Sometimes these delays can last days, weeks, or even months. Though security clearance checks are rare, there is always a chance a visa application can be delayed as a result of security clearance checks. This is true whether an individual has previously been subject to a security check or not on a prior visa application. Therefore, please plan accordingly. Travel should be planned so that a possible delay due to security clearance checks does not come as a surprise to those expecting a timely return to the United States.

Furthermore, we recommend that applicants for adjustment of status (Form I-485) should renew advance parole documents early so that they can use the Advance Parole (AP) rather than applying for new visas. Individuals with pending applications for adjustment of status (Form I-485) can travel internationally only with an advance parole document, issued prior to departure, that will remain unexpired until after they return to the United States from their trip abroad. (The only exception is for adjustment of status applicants who hold valid, unexpired H-1B or L-1 visas.) The USCIS can often take as long as three to four months to
process an advance parole renewal application. For that reason, it is wise to apply for renewal of any advance parole document within four months of its expiration date, to ensure that a new advance parole document will arrive before the existing advance parole document can expire. Otherwise, the new advance parole document may not be received in time to be used on the next international trip. We also recommend that individuals do not make travel plans that will coincide with the expiration date of an AP document unless the renewal document has been issued.

√ Review the I-94 and send J&H a copy.
The white I-94 card issued from U.S. Customs & Border Protection at the time of admission controls one’s ability to lawfully work and remain in this country. Form I-94 cards are typically issued by CBP each and every time one enters the U.S. through a port of entry (POE), either by air, sea or land. Generally speaking, the Form I-94 expiration date should match the underlying petition approval notice’s expiration date. If the individual is traveling on a visa based on a Blanket L-1 held by his/her employer, s/he may be admitted for up to a three-year period. However, if the passport expires earlier, the Form I-94 expiration date will be limited to the expiration date of the passport. The passport is the controlling document in this situation.

Please also note that CBP officers are not consistent in providing for the 10-day “grace period” allowed for certain nonimmigrant employment classifications. Sometimes, the expiration date is simply “short changed” due to CBP error. Other times the Form I-94 expiration dates of family members are not in alignment with the employee’s own I-94 card.

Thus, it is very important that individuals provide a copy of the I-94 card (front and back) to J&H immediately upon return. Please be sure to scan and e-mail (or fax with a cover sheet) a copy of the new I-94 card after each entry into the United States to J&H.

J&H NEWS

WEBINARS
To register for any of our webinars please e-mail webinar@jackson-hertogs.com with the date of the seminar you would like to attend.

July 26, 2012: Midyear “Hot Topics” in Immigration Law
This webinar will focus on current hot topics and provide an update on current immigration law and procedures and follows on the heels of our participation in the annual American Immigration Lawyers Association (AILA) conference, where many U.S. government representatives present on panels, and announce or clarify changes in law, regulations, or policy. We will review recent developments with DOS, DOL, CBP, and USCIS, as well as other areas that may be relevant to our corporate clients. Please join us for this overview of the latest developments in immigration. (There is no PHR/SPHR certification for this webinar)

IMMIGRATION TRIVIA
True or False. Foreign national employees in nonimmigrant status (i.e. H1B, L-1, O-1, etc.) may apply for a visa stamp in the U.S.
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