H-1B CAP SEASON IS STARTING!

The Fiscal Year (FY) 2015 H-1B cap season will open on April 1, 2014 with an initial five business day filing window (i.e., April 1, 2, 3, 4, and 7). The earliest date USCIS will accept cap filings is April 1, 2014. Our office is actively preparing new H-1B petitions to file during the first five business days of April. To assist employers that we currently represent, J&H has conducted a review of the employee records with our office and identified anyone who is potentially eligible for an H-1B petition. Reminders have been sent with a list of eligible names in order for internal decisions to be made regarding H-1B sponsorship. Employers should continue to notify J&H of any potential offers being made to new H-1B hires in the upcoming months to ensure that an H-1B cap petition is prepared in time if needed.

The cap (the numerical limit on H-1B petitions) for FY 2014 is 65,000. An additional 20,000 H-1B numbers are set aside for H-1B petitions filed on behalf of individuals with U.S. master’s degrees or higher. Last year, the FY 2014 H-1B cap was met within the first five business day filing window. USCIS received approximately 124,000 cap-subject H-1B visa petitions, which was more than the available H-1B numbers. A computer-generated random selection process (known as the “lottery”) of the petitions received during the first five business day filing window rejected 39,000 of the submitted petitions.

The H-1B cap typically impacts employers who wish to employ individuals who are in the U.S. in other nonimmigrant categories (F-1, J-1, L-1, etc.) or who are H-1B nonimmigrants with universities or related not-for-profit research institutes (which are deemed cap-exempt) or who are outside the United States and have not previously held H-1B status. Individuals who were already counted against the cap in a prior fiscal year and who have not “reset” their six year limitation of stay clock, are exempt from the cap. Therefore, current employees or possible new hires already in H-1B status and requiring extensions are not subject to the cap.

Cap petitions may continue to be filed until USCIS announces that all visa numbers have been assigned. As described by USCIS, this date is known as the final receipt date. If USCIS announces that the cap has been reached at the end of the first
five business day filing window, the Service must include all petitions in the lottery to determine which petitions get one of the H-1B visa numbers. Generally, petitions that are in the mail to USCIS on the day the cap is announced reached are not accepted, and will be returned unprocessed. In other words, petitions received after the final receipt date will be rejected.

The U.S. government’s fiscal year runs from October 1 through September 30 each year and H-1B visa petitions cannot be filed more than six months prior to the requested start date. Typically, employers submit the bulk of the H-1B cap petitions to arrive at the USCIS service centers by April 1 of each filing year, although there is an initial five business day filing window.

Employers should continue to notify J&H of any potential offers being made to new H-1B hires in the upcoming months to ensure that an H-1B cap petition is prepared in time if needed. J&H will be monitoring the cap count and providing updates as we get closer to the cap being reached. If you are not currently working with J&H but would like to discuss the impact that the cap will have on your company, please contact us.

NCSC: INTERACTIVE VOICE RESPONSE SYSTEM

Beginning February 1, 2014 the new USCIS Interactive Voice Response (IVR) system will be available through the USCIS National Customer Service Center (NCSC) line. The IVR is supposed to provide streamlined access to immigration information, case status and customer service representatives. IVR will be available 24 hours a day, 7 days a week. Live assistance will continue to be available Monday through Friday from 8 am to 8 pm in each time zone. The customer service line can be reached by calling 800-375-5283. Callers must have a receipt number issued by USCIS and the last notice received regarding the case. Please note that for some petition types, only the employer or attorney of record may seek assistance on a pending case.

DOS NEWS

NONIMMIGRANT VISA (NIV) INTERVIEW WAIVER PROGRAM MADE PERMANENT

In January 2012, the Department of State (DOS) introduced a pilot program as part of President Obama’s initiative to improve and speed up the nonimmigrant visa application process for certain visa categories. DOS recently announced that this program has been made permanent.

The NIV Interview Waiver Program allows consular officers to waive the interview for applicants seeking to renew any nonimmigrant visa within 12 months of expiration of the initial visa in the same classification.

With the exception of E, H, L, P, or R visas, interview waivers are also available for nonimmigrant visa renewals up to 48 months after expiration of the initial visa in the same classification.

In addition, interview waivers may be granted to certain first-time Brazilian visa applicants under the age of 16 or over the age of 66.

Details about the new program have been codified in the US State Department’s Foreign Affairs Manual (FAM), and can be reviewed online at:
http://www.state.gov/documents/organization/87422.pdf

FEBRUARY VISA BULLETIN

The Department of State (DOS) Visa Bulletin for February 2014 continues to indicate limited forward movement in one of the employment-based second preference category (EB2) after a few months of rapid priority date progression. The EB2 China category moved forward one month from December 8, 2008 to January 8, 2009. The EB2 India category remains at November 15, 2004 while the EB2 category for all other countries, including Mexico and the Philippines, remains current.

There was also limited forward movement in most of the employment-based third preference categories (EB3). While the EB3 India category remains at September 1, 2003, the EB3 category for the Philippines moved forward two months from February 15, 2007 to April 15, 2007. All other EB3 categories, including Mexico and China, also moved forward two months from April 1, 2012 to June 1, 2012.

The employment-based first preference category (EB1) continues to remain current for all countries. The DOS has indicated that it is unlikely that there will be additional forward movement for most employment-based categories during the next few
months. In addition, a sudden surge in demand could require the retrogression of a cut-off date at any time.

For family-based immigration, the DOS is continuing to predict retrogression in the family-based second preference categories (F2A and F2B) for Mexico as we discussed in our last news update. The F2B Mexico category retrogressed from April 1, 1994 to May 1, 1993 due to heavy visa demand. Although the F2A Mexico category remained at September 1, 2013, the DOS predicts retrogression in the next few months.

The priority date is effectively one’s place in line to immigrate. The priority date is established when a PERM application is filed with the Department of Labor, or for those cases not requiring a PERM application (typically EB1 cases and EB2 applications in the national interest), when the I-140 is filed with the USCIS. For family-based immigration cases, the priority date is established when the I-130 is filed with the USCIS. Individuals with priority dates earlier than the listed cut-off date on the bulletin are eligible to submit applications for adjustment of status (or consular visa applications) or if their applications are already pending may have their cases adjudicated. If one’s priority date is not “current” neither agency may accept the case for processing nor adjudicate a pending case because the “visa is not available” if the priority date is not “current.”

Note that DOS looks at your country of birth in determining whether you are a national of a given country, not your country of citizenship. It is country of birth (yours or your spouse) that determines which country to which you are “charged” or “counted” against for purposes of permanent residency. For example, if you were born in India but have since become a citizen of Canada, you are still charged against India and you have to look at advancements for India rather than worldwide numbers. As another example, if you (principal applicant on an employment based process) were born in India but you are married to a person who was born in Canada, both of you can be charged against Canada. This latter example is called “cross-chargeability.”

For general information on visa retrogression, please see our FAQ on this subject. For more information on the Visa Bulletin and country quota movements, including information about movement in the Family-Based Quotas, please see our DOS Visa Bulletin and Quota Movement page, which includes detailed nationality-specific charts of quota movement since 1996. Please also note that while Congress is contemplating new immigration legislation it is far too early to look at the potential changes and their impact on the immigration system. Until new legislation is actually passed and becomes law, we can only look to the current laws for how cases will be processed.

**POSSIBLE RETROGRESSION IN F2A MEXICO VISA CATEGORY IN SPRING 2014**

The U.S. Department of State (DOS) has informed the American Immigration Lawyers Association (AILA) that due to the demand of F2A visas by Mexican nationals, the Mexico F2A visa preference category is expected to retrogress in the spring of 2014. The F2A visa category is for immigrant visas for spouses and children of US lawful permanent residents. It is possible that the F2A visa preference category for Mexico may retrogress sooner than the spring of 2014 depending on visa demand. DOS has also indicated that the F2A worldwide visa preference category will retrogress by the last quarter of 2014. DOS will print visa retrogression predictions in future visa bulletins to enable us to plan for possible, upcoming retrogressions.

**IMMIGRATION TRIVIA**

True or False? Only H-1B cap petitions that are filed on the last day of the initial five business day filing window will be subject to a lottery to determine which petitions obtain an H-1B cap.

**Answer:** False! If USCIS announces that the cap has been reached at the end of the first five business day filing window, the Service must include all petitions received during the five days in the lottery to determine which petitions get one of the H-1B visa numbers.
LEGISLATIVE CORNER

HOUSE TO UNVEIL STATEMENT OF PRINCIPLES ON IMMIGRATION REFORM


The principles focus on the following key subject matters: Border Security and Enforcement; Implementation of an Entry-Exit visa tracking system; Employment verification and workplace enforcement; reforms to the legal immigration system; youth; and criminal issues. It is expected that while the Senate has taken a comprehensive approach the House will follow a more piecemeal approach to addressing immigration issues given that the House failed to move forward with the Senate’s bi-partisan comprehensive immigration bill, S.744. The Senate bill would have increased the total number of H-1B visas, eliminated per-country visa number limitations, and would have allowed for more visas and green cards for foreign students who completed U.S. STEM degrees. The Principles of Immigration state the following with regards to legal immigration makes the following statement:

For far too long, the United States has emphasized extended family members and pure luck over employment-based immigration. This is inconsistent with nearly every other developed country. Every year thousands of foreign nationals pursue degrees at America’s colleges and universities, particularly in high skilled fields. Many of them want to use their expertise in U.S. industries that will spur economic growth and create jobs for Americans. When visas aren’t available, we end up exporting this labor and ingenuity to other countries. Visa and green card allocations need to reflect the needs of employers and the desire for these exceptional individuals to help grow our economy.

The goal of any temporary worker program should be to address the economic needs of the country and to strengthen our national security by allowing for realistic, enforceable, usable, legal paths for entry into the United States. Of particular concern are the needs of the agricultural industry, among others. It is imperative that these temporary workers are able to meet the economic needs of the country and do not displace or disadvantage American workers.

Reading between the lines, it would appear that the GOP is amenable to increasing H-1B numbers as well as easing the lengthy processing of green card applications due to priority date retrogressions.

J&H NEWS

J&H WEBINAR SERIES

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

February 26, 2014: Hiring F-1s and employment considerations in light of H-1B cap issues

Hiring foreign nationals in F-1 status has gotten more complicated, even as more options and potential protections have been added. This webinar will focus on the hiring of F-1 students and how to maintain their work authorized status beyond the expiration of their F-1 status. We will first discuss the differences between curricular practical training (CPT) and post-graduation option practical training (OPT) and the basics for obtaining work authorization. We will also discuss STEM OPT 17-month extensions for E-Verify enrolled employers, “cap-gap” work authorization, travel issues for F-1s and timing for H-1B and other nonimmigrant petitions. Finally we will look at whether there are options to proceed directly to the green card from F-1 status and the pros and cons of those options.

March 26, 2014: LCA Compliance issues

Employers of H-1Bs are required to maintain paperwork on file and available to the public or DOL for their H-1B employees. Do you know what an LCA is? Do you know where your LCAs are maintained? This webinar will present an overview on employer requirements for Labor Condition Application (LCA) recordkeeping, including public and DOL access file guidance, location of records, how to update LCAs, and when LCAs may be destroyed. We will also discuss some of the immigration consequences for employers related to corporate mergers, acquisitions, and restructuring.

April 23, 2014: Round up of the H-1B cap filings and alternatives to the H-1B visa

Jackson & Hertogs will review the current fiscal year’s H-1B filings progress and discuss alternatives to the H-1B visa status. Citizens of certain countries (e.g., Canada, Mexico, Chile, Singapore, & Australia) can often find work visas independent of the H-1B category. Further, certain international transferees, citizens of countries sharing nationality with foreign-owned corporations, and foreign nationals of “extraordinary ability” can also be eligible for visas independent of the H-1B. It is anticipated that the H-1B cap will be reached during the first five business days of April this year. Please join us as we explore alternatives that may be available should the popular H-1B visa no longer be an option for your potential hire.