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USCIS NEWS

FY2013 H-1B VISA NUMBERS DEPLETING RAPIDLY

The USCIS announced receipt of 35,900 cap-subject H-1B visa petitions as of April 20. Compared with the tally of 25,600 H-1B visa petitions filed as of April 9, it appears that remaining H-1B petitions are being claimed at a rate of 1175 per day. If this rate remains constant, all H-1B numbers for the upcoming fiscal year may be gone by the end of May 2012. This is a much faster rate of H-1B visa consumption as compared with last year when the cap was reached on November 22, 2011.

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. It is our recommendation 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 on the final receipt date. 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—these are individual who work for exempt employers which includes universities and related not-for profit research institutes.

Please contact your Jackson & Hertogs attorney if you have questions about this year's H-1B visa cap.

SPREAD THE WORD!

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USCIS NEWS (CONT'D)

CHANGE TO LOOK AND FEEL OF I-797C NOTICE

On April 2, 2012 USCIS began issuing Form I-797C Notice of Action on plain bond paper rather than on security paper. The I-797C is used to notify:

1. Receipt of filing
2. Rejection due to incorrect information or payment
3. Transfer of case to other USCIS office
4. Approval of a motion to reopen a case at USCIS
5. Fingerprinting or biometric appointment
6. Interview appointment or rescheduling of interview appointment

In addition, USCIS will now include language at the top of the notice that reads "THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT."

DOL NEWS

FEIN VERIFICATION FOR LCA FILINGS

On April 18, 2012, the Office of Foreign Labor Certification (OFLC) released a new enhancement to the iCERT system. This new enhancement provides a real-time electronic check of the Federal Employer Identification Number (FEIN) during the case preparation stage of the Labor Condition Application (LCA). The LCA is a required filing for H-1B, E-3, and H-1B1 petitions.

The iCERT system will compare the employer FEIN entered on the application against a comprehensive database of FEINs maintained by the OFLC. If a match is found, the system will provide a notification that reads as follows: "Your FEIN has been verified by the iCERT System. Please proceed with the completion of your application."

If a match is NOT found, the system will immediately provide a notification that additional official documentation evidencing the validity of the FEIN must be submitted to OFLC before the LCA can be certified.

The enhancement to the system should help reduce denials of LCAs and delays in processing.

DOS NEWS

MAY VISA BULLETIN: RETROGRESSION FOR EB2 INDIA AND CHINA

After several months of forward movement, the Department of State (DOS) [Visa Bulletin for May 2012](#) shows a significant retrogression in the employment-based second preference (EB2) category for India-born and China-born individuals. For both China-born and India-born individuals, the EB2 priority date moved back to August 15, 2007. All countries other than India and China remain "current" in the EB2 category. Employment-based first preference (EB1) also remains current for all countries.

The employment-based third preference (EB3) numbers for all countries other than India, China and Mexico moved slightly forward to May 1, 2006. EB3 India moved forward a few days to September 8, 2002. EB3 China moved forward 1 month to April 1, 2005.

The DOS also advises that further retrogression will be required:

RETROGRESSION OF THE CHINA-MAINLAND AND INDIA EMPLOYMENT SECOND PREFERENCE CUT-OFF DATE

Due to the rapid forward movement of the cut-off date, demand for China and India Employment Second preference numbers has increased dramatically during recent months, and at a much faster rate than had been expected. Therefore, it has been necessary to retrogress that cut-off date to August 15, 2007 in an attempt to hold number use within the annual limit while maintaining availability for those countries that have not yet reached their per-country limit. Notices were included in the November, January, and February Visa Bulletins alerting readers to the possibility of such a retrogression. While corrective action has become necessary earlier than was anticipated based on the information available at the time cut-off dates were determined, it is hoped that readers are not caught off guard by this retrogression.

Should additional information regarding potential demand become available, it may be necessary to take additional corrective action at any time.

Every effort will be made to return the China and India Employment Second preference cut-off date to the previously announced April date of May 1, 2010. This will be done as quickly as possible under the FY-2013 annual limits, which take effect October 1, 2012. It will not be possible to speculate on the cut-off date which may apply at that time until late summer.

USCIS has indicated that it will continue accepting China and India Employment Second preference I-485 filings based on the originally announced April cut-off date.

Subsequent to the issuance of this notice, DOS advised AILA on April 23, 2012, that the annual limit in the EB2 category for

China- and India-born was reached. DOS notified USCIS that as of April 11, 2012, no more visas would be authorized for these categories. This means that USCIS cannot continue to adjudicate to approve I-485 applications for these categories. This is considered an "additional corrective action" that was forecast and described in Section D of the May 2012 Visa Bulletin. USCIS has continued to accept adjustment applications based upon cut-off dates published in the April Visa Bulletin. However, requests from USCIS service centers and field offices for visas in the EB2 category for foreign nationals chargeable to China-mainland born or India will be retained by DOS for authorization in FY2013, beginning on October 1, 2012 once their priority dates are again current.

It is important to note that "nationality" for immigrant visa allotment is not the same as citizenship. Generally, DOS looks at the country of birth in determining whether a person is a national of a given country. As a result, persons who become citizens of other countries (e.g., Indians who become Canadian citizens) are still considered nationals of their birth country for immigrant visa purposes.

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.

VISA PROCESSING FEES CHANGED ON APRIL 13

Effective April 13, 2012, the Department of State adjusted visa processing fees. The fees for most nonimmigrant visa applications and Border Crossing Cards increased, while all immigrant visa processing fees decreased. For specific fee changes see <http://www.state.gov/r/pa/prs/ps/2012/03/187114.htm>.

DOS PROVIDES LIST OF COUNTRIES WITH LIMITED OR NO U.S. VISA SERVICES

Earlier this month, the Department of State provided a current list of countries with limited or no U.S. visa services. The list includes U.S. embassies and consulates that currently provide limited visa services, locations where visa services are suspended, and countries that do not have U.S. embassies or consulates. Of note, the U.S. embassy in London will be limiting its visa services during July and August. For the complete list of countries with limited or no U.S. visa services, please visit http://travel.state.gov/visa/temp/info/info_1302.html.

DOS ANNOUNCES IT WILL OPEN TWO NEW CONSULATES IN BRAZIL

Remarks by Secretary of State Hillary Clinton to the U.S.-Brazil Partnership for the 21st Century on April 9th included an announcement that the U.S. will be opening two new consulates in Brazil - one in Belo Horizonte and one in Porto Alegre.

CBP NEWS

GLOBAL ENTRY PROGRAM EXPANDS TO FOUR ADDITIONAL AIRPORTS

CBP expanded the Global Entry Program to four additional airports: Minneapolis - St. Paul International Airport, Minneapolis, Minnesota; Charlotte Douglas International Airport, Charlotte, North Carolina; Denver International Airport, Denver, Colorado; and Phoenix Sky Harbor International Airport, Phoenix, Arizona.

The Global Entry Program allows pre-approved members a faster, automated alternative to regular passport processing lines. Members insert their machine readable passport or lawful permanent resident card into a document reader, provide digital fingerprints for comparison with fingerprints on file, answer customs declaration questions on the Global Entry kiosk's touch-screen, and then present a transaction receipt to a CBP officer before leaving the inspection area.

The Global Entry Program is now available at 24 U.S. international airports.

J&H NEWS

J&H ATTORNEY SPEAKS AT I-9 COMPLIANCE WEBINAR

Managing Partner, Ilana Drummond was a speaker on a webinar hosted by LawLogix on I-9 101: Implementing a Compliance Strategy. There is a follow up Q&A session on this topic also being hosted by LawLogix, provider of Guardian's Electronic I-9 system, on Thursday, May 3, 2012. For more information and to register for this free event, please see <http://go.lawlogix.com/Audits101.html>

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.

April 25, 2012: PERM Recruitment Strategies.

The PERM labor certification process requires employers to first test the local labor market to determine whether qualified U.S. workers are available to fill jobs currently held by foreign staff. Reviewing recruitment results can be a more challenging process in today's depressed job market. In some cases, PERM applications are met with DOL audits requesting resumes and records of applicant contact. This webinar will assist human resources and staffing professionals in analyzing these issues and developing best practices both in managing the applicant review process, and in maintaining records in compliance with DOL requirements. *(PHR/SPHR certification pending)*

IMMIGRATION TRIVIA

When is a Labor Condition Application (LCA) filed?

- when the employer sponsors the green card process for an employee, also called "PERM".
- When the employer files an H-1B (specialty occupation) petition for an employee.
- When the employer files a TN Mexican or Canadian NAFTA petition for an employee.
- None of the above.

Answer: (b)! The Labor Condition Application is electronically filed with DOL on Form ETA 9035. It is required for all H-1B, H-1B1 (Singapore/Chile FTA) and E-3 (Australian) visa categories. The LCA requires the employer takes on obligations to pay H-1B workers the greater of either the company's actual wage or the local prevailing wage; provide working conditions for H-1Bs that do not adversely affect the working conditions of U.S. workers; confirm no strike or lockout exists in the same occupation and place of employment; and give notice to employees at the place of employment. The LCA is filed after the employer confirms notice has been provided to its employees. Don't confuse the LCA with a DOL PERM "labor certification" application!