

H-1B Filing Date Approaching; Employers Should Assess H-1B Needs Now

February 19, 2010

On April 1, 2010, U.S. Citizenship and Immigration Services (USCIS) will begin accepting cap-subject H-1B petitions for FY 2011, with an employment start date of October 1, 2010. We recommend that all H-1B petitions subject to the FY 2011 cap be sent to the relevant USCIS Service Center by overnight mail on March 31, 2010. Please note that any H-1B petitions subject to the cap received by USCIS before April 1, 2010 will be rejected.

Only 65,000 cap-subject H-1B petitions may be approved per fiscal year. By law, 6,800 of the 65,000 visa numbers are allocated as H-1B1s to nationals of Chile and Singapore. An exemption from the 65,000 cap is available to holders of a master's or higher degree from a U.S. institution of higher education, up to a limit of 20,000 petition approvals.

Only petitions filed on behalf of foreign nationals who have not previously been counted against the H-1B cap are subject to the H-1B cap. Petitions on behalf of foreign nationals who have previously been counted against the H-1B cap or who are employed at an institution of higher education, nonprofit research organization, or governmental research organization are not subject to the cap.

How This Affects You

Employers should review the immigration status of their current and potential foreign national employees and identify any individuals for whom H-1B status would be desirable. This would include foreign nationals in TN and E status whom the employer may want to sponsor for permanent residence, recent graduates employed in F-1 status who may be unable to continue to work once their Optional Practical Training has expired, candidates abroad who are subject to the annual H-1B cap and are not eligible for another type of work-authorized status in the United States, and candidates working for a different employer in another nonimmigrant status who would require an H-1B.

Please note that this year the labor condition application (LCA)—a required employer attestation that is part of an H-1B petition—**must** be filed through the Department of Labor portal commonly known as iCert. It is important to note that LCA certification may take more than seven days. As a result, the LCA needs to be filed no later than March 24—and preferably earlier—if the petition is to be received by USCIS on April 1.

We recommend that all employers that wish to file H-1B petitions that will be subject to the FY 2011 cap contact us as soon as possible so that we may begin preparing these petitions.

For more information, or if you have any questions regarding the issues discussed in this Immigration Alert, please contact any of the following attorneys:

Washington, D.C.

Eleanor Pelta
Eric Bord

202.739.5050
202.739.6040

epelta@morganlewis.com
ebord@morganlewis.com

San Francisco

A. James Vázquez-Azpiri

415.442.1343

ajvazquez@morganlewis.com

Lance Nagel

415.442.1345

lnagel@morganlewis.com

Now Available: *AILA's Focus on Immigration Practice Under AC21*

Written by Eleanor Pelta and A. James Vázquez-Azpiri, *AILA's Focus on Immigration Practice Under AC21* provides invaluable insight on the effect AC21 has had on the H-1B visa category. For more information, please visit www.ailapubs.org/ac21.html or call 1.800.982.2939 to order a copy.

About Morgan, Lewis & Bockius LLP

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—more than 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This Alert is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states.

Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2010 Morgan, Lewis & Bockius LLP. All Rights Reserved.