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MEMORANDUM

Date: April 1, 2011
From: Bennett R. Savitz
Subject: **Client Alert Regarding H-1B Cap Filings**

The H-1B filing season begins today!

For the second time in four years, the 65,000 cap on H-1Bs available during this Fiscal Year (October 1, 2010 to September 30, 2011) was not reached on April 1st! Since an H-1B application can be filed up to six months prior to the intended start date (April 1st for an October 1st start date), that was precisely the situation the previous two years. Due to the economic downturn, the cap was not reached until January of 2011.

Even when the H-1B cap is reached, it does not affect most foreign nationals currently in H-1B status filing for an extension of status. Additionally, the H-1B Visa Reform Act of 2004 exempts from the H-1B cap the first 20,000 beneficiaries who have earned a Master's or higher degree from a U.S. institution of higher education. However, the H-1B cap does affect foreign nationals in some other nonimmigrant statuses, such as B, F, J or H-4, who request a change of status to H-1B, as well as foreign nationals who are applying to work in the United States in H-1B status for the first time.

The H-1B cap causes significant disruptions for both employers and prospective employees. Since it is impossible to predict exactly when the H-1B cap will be reached in the upcoming Fiscal Year (October 1, 2011 to September 30, 2012), it is important to file as soon as possible.

Please contact us if you have any questions. Thank you.