

New H-1B Filings for FY 2011 Begin April 1st

March 17, 2010

EMPLOYMENT BULLETIN - MARCH 17, 2010

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On April 1, 2010, the U.S. Citizenship and Immigration Services ("USCIS") will begin accepting new H-1B petitions for employment commencing on October 1, 2010. New H-1B petitions are subject to an annual limit of 65,000 new H-1B visas, plus an additional 20,000 visas for foreign workers with an advanced degree from a U.S. academic institution. The annual quota only applies to new H-1B visas, not to individuals who already hold H-1B status, and universities and non-profit research organization are also excluded from the H-1B cap.

The rate of H-1B filings was slower last year due to the economic downturn, however the H-1B cap was reached on December 21, 2009. Although it is difficult to predict the volume of H-1B filings, the expectation is that the H-1B cap will be reached again this year, possibly promptly after the filing period opens on April 1. If USCIS receives more petitions than there are available numbers in the first 7 business days, it will hold a lottery to determine which cases may proceed to be adjudicated. Employers should evaluate their H-1B visa needs now so that any petitions will be ready for filing in the first week of April 2010. Employers should consider filing an initial H-1B for current employees or potential new candidates working on another type of work visa, such as students (F-1/OPT), exchange visitors (J-1), intra-company transferees (L-1), NAFTA professionals (TN), Australian Free-trade professionals (E-3), or Treaty Investor/Traders (E-1/E-2).