



Immigration Law Information Memo

March 2010

Bond, Schoeneck & King, PLLC

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2010 H-1B VISA FILING ALERT

U.S. employers continue to rely upon the H-1B Specialty Occupation Worker category to facilitate the temporary employment of foreign nationals in professional positions.

In 2010, the U.S. Citizenship and Immigration Services ("USCIS") is authorized to issue 65,000 H-1B approvals for those beneficiaries who possess at least a bachelor's degree, and an additional 20,000 approvals for those beneficiaries who have obtained a master's or higher degree from a college or university in the United States. These limits are often referred to as the "H-1B cap." These approvals authorize employment beginning October 1, 2010 (the beginning of the federal government's fiscal year).

Pursuant to federal regulations, interested U.S. employers may file H-1B petitions six months in advance of the start of the fiscal year. **This means that the earliest that a U.S. employer may submit a petition for a new H-1B worker, who has not already been counted against the H-1B cap, is April 1, 2010.**

Over the past several years, the USCIS reached its 65,000 H-1B cap in two days, having received almost twice as many petitions as the allotted quota by April 2. Further, it took approximately four weeks for the USCIS to reach the H-1B quota for master's level candidates. The remaining H-1B cases were rejected.

While the H-1B cap for 2009 was not fully exhausted until December 2009, we nevertheless anticipate a strong influx of H-1B filings this year. Employers are well advised to file their petitions for new H-1B employees on **April 1, 2010** to avoid being closed out of consideration by the H-1B cap.

In April 2009, the U.S. Department of Labor ("DOL") implemented a new electronic process for filing the Labor Condition Application ("LCA"), a necessary component of the H-1B petition dealing with prevailing wage issues. Prior to April 2009, employers and their legal representatives could instantaneously certify the LCA. Since the LCA can no longer be automatically certified, the application must now be manually verified by the DOL. This new verification system, known as i-CERT, can take a *minimum* of seven (7) days to be completed by the DOL. Accordingly, additional time is needed to prepare this portion of the H-1B petition.

If we can be of assistance in evaluating visa options for foreign national candidates or in preparing your H-1B petitions, we suggest that you contact us by **no later than Monday, March 8, 2010** to allow adequate time to meet the April 1st filing date.

If you have any questions or need any advice regarding this VISAAlert, call 315-218-8000 or e-mail:

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