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## Immigration eNews

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### **USCIS Issues New Rules Regarding this Year's H-1B Cap Cases**

On April 1, 2008, the United States Citizenship and Immigration Service (USCIS) will begin accepting H-1B petitions on behalf of foreign nationals who need H-1B status with a start date of October 1, 2008, which would include individuals who have never had H-1B status before, and most commonly students in J-1 or F-1 status.

On March 19, 2008, the USCIS released a copy of an interim final regulation that will make changes to certain processes relating to this year's FY2009 H-1B cap petitions and which generally prohibits multiple filings. The regulation will be published in the Federal Register within the next several days. It will be effective as soon as it is published. The regulation:

- Changes from 2 days to 5 days the period of time during which cap-subject H-1Bs can be received to be included in any "lottery" that would occur if, as expected, the number of petitions exceeds the quota. Accordingly, petitions received up until April 7th will be included in the regular lottery. If enough U.S. master's cap exempt cases are received during this period a lottery will be held to determine which U.S. master's cap cases are included among the 20,000 exempt cases. Those U.S. master's cap cases not chosen for the lottery will be included in the lottery for the regular cap cases
- Prohibits multiple filings from the same employer for the same employee, even if the filings are for different jobs. The one exception would be that related employers (for example, a parent company and its subsidiary) could file separate petitions for the same employee for different positions, based on legitimate business need. Employers will receive a denial or a revocation (without refund of fees) of any petition found to have been a multiple filing

In 2007, the annual cap of 58,200 available H-1B numbers was reached in record time, on the very first day the USCIS began accepting H-1B petitions. As the USCIS received over 120,000 H-1B petitions within the first day, the USCIS resorted to a "lottery" system to determine which of the petitions would be accepted under the cap. Therefore, even if a petition was received on the very first day of filing, there was no guarantee that the petition would be accepted for processing. Further, the additional 20,000 available H-1B numbers for those who possess a master's degree or higher from a U.S. educational institution were also used in record time-within several weeks of the first day of accepting petitions.

Accordingly, employers must evaluate the need to file H-1B petitions on behalf of their employees immediately. An employer cannot wait too long to file an H-1B petition. For example, a student who has employment authorization valid until May 31, 2009, may be caught outside of the 2008 H-1B cap if the employer does not file an H-1B petition until April 1, 2009 (seeking an October 1, 2009 start date). The student in this situation would not be eligible to work from June 1, 2009 through September 30, 2009 (assuming the H-1B petition was selected and approved) and might even have to leave the U.S. for some period of time.

### **Higher Civil Fines Against Employers Who Violate Immigration Laws**

Attorney General Michael B. Mukasey has announced that effective March 27, 2008, civil fines against employers who violate federal immigration laws will increase by as much as \$5,000. As of March 27, 2008, civil penalties for knowingly employing an unauthorized worker can result in a civil penalty ranging from \$375 to \$16,000, depending on the number of violations.

The minimum penalty for knowing employment of an unauthorized alien increases by \$100, from \$275 to \$375. Some of the higher civil penalties are increased by \$1,000; for example, the maximum penalty for a first violation increases from \$2,200 to \$3,200. The biggest increase under the rounding mechanism raises the maximum civil penalty for multiple violations from the current \$11,000 to \$16,000. These penalties are assessed on a per-alien basis; thus, if an employer knowingly employed, or continued to employ, five unauthorized aliens, that could result in five separate fines.

Under the Immigration and Nationality Act, employers who violate employment eligibility requirements are subject to civil monetary penalties. Employers may be fined under the Act for knowingly employing unauthorized aliens or for other violations, including failure to properly complete an I-9 form, wrongful discrimination against applicants or employees on the basis of nationality or citizenship and document fraud.

### **DHS Signs VISA Waiver Program Agreements with Estonia, Latvia, Lithuania, Slovakia, the Czech Republic, and Hungary**

In recent weeks, the U.S. Department of Homeland Security (DHS) Secretary Michael Chertoff signed Visa Waiver Program (VWP) Memoranda of Understanding (MOU) with foreign ministers of Estonia, Latvia, Lithuania, Slovakia, the Czech Republic, and Hungary. The agreements outline security enhancements that put these countries on the path toward visa-free travel to the U.S., and possible designation as VWP members later this year.

Among the security enhancements required, DHS will establish an electronic system of travel authorization for air passengers. VWP travelers will be asked to provide some basic information online, which will generate an authorization number for travel. DHS will announce complete details on how the authorization systems will work, and when they will begin, later this year. VWP partners also must ensure reporting of lost and stolen passports to avoid fraudulent use and enhance security measures for airports that originate flights to the U.S., to include permitting air marshals on certain flights.

The VWP has been authorized by U.S. law for over 20 years, with 27 current members from Asia and Europe. The VWP allows the citizens of the VWP member countries to visit the U.S. for limited business purposes or pleasure without the need to first obtain a visa at a U.S. Embassy/Consulate abroad.

### **USCIS Announces 18-Month Extension of Temporary Protected Status (TPS) for Nationals of Somalia: Employment Authorization documents (EAD) Extended through September 2008**

Temporary Protected Status (TPS) has been extended for nationals of Somalia through September 17, 2009. Under this extension, those who have already been granted TPS are eligible to live and work in the United States for an additional 18 months and continue to maintain their status.

DHS also automatically extended the validity of Employment Authorization Documents (EAD) held by eligible Somalis for an additional six months from March 17, 2008 through September 17, 2008. The extension of TPS for Somalia is effective March 17, 2008 and will remain in effect through September 17, 2009. Nationals of Somalia who have been granted TPS must re-register for the 18-month extension during the 60-day re-registration period beginning March 12, 2008 and remaining in effect until May 12, 2008. Somali TPS beneficiaries are encouraged to apply as soon as possible following the start of the 60-day re-registration period. Details on where, when and how to file under each designation is available on the USCIS' website.

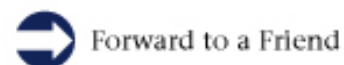
### Visa Bulletin for April 2008

The Immigration and Nationality Act sets an annual minimum for both family-based and employment-based immigrant visas ("green cards"), prescribed by categories and per-country limits. A prospective immigrant can apply to become a permanent resident only when a visa number is available in his/her respective category. The monthly Visa Bulletin, published by the U.S. Department of State, provides a monthly update on the availability of visa numbers, listing the cut-off priority. Only applicants who have a priority date earlier than the cut-off date may be allotted a number.

The complete Visa Bulletin is available at the Department of State's website at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_4177.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_4177.html) Below is an excerpt from the April 2008 Visa Bulletin pertaining to the employment-based categories.

	<b>All Chargeability Areas Except Those Listed</b>	<b>CHINA-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
<b>Employment-Based</b>					
1st	C	C	C	C	C
2nd	C	01DEC03	01DEC03	C	C
3rd	01 JUL05	08FEB03	01OCT01	01OCT01	01JUL05
Other Workers	01MAR02	01MAR02	01MAR02	01MAR02	01MAR02
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C
"C" - current					

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