



UPDATE Immigration

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H-1B CAP UPDATE

The U.S. Citizenship and Immigration Services (USCIS) updated its count of FY 2012 cap-subject H-1B petitions and advanced degree cap-exempt petitions received. As of 6/1/11, approximately 13,600 H-1B cap-subject petitions were received. USCIS has received 9,300 H-1B petitions for aliens with advanced degrees. Practically, this means that approximately 76 percent of regular H-1B cap numbers and 53 percent of master's cap H-1B numbers are left. Note that U.S. advanced degree holders are eligible for any unused regular H-1B numbers once the 20,000 master's cap H-1B number quota is met.

As a matter of background, U.S. businesses use the H-1B program to employ foreign workers, such as scientists, engineers, or computer programmers, in specialty occupations that require theoretical or technical expertise in specialized fields. There is a 65,000 H-1B numerical limitation (the cap), where up to 6,800 visas may be set aside from the cap of 65,000 during each fiscal year for the H-1B1 program, under the terms of the legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements. An additional 20,000 H-1B visa numbers are available to petitions filed for those with a U.S. master's degree or higher.

E-VERIFY — NEW TOOLS

USCIS published the third issue of its newsletter, entitled E-Verify Connection, in May 2011. It provides an overview of the available new tools for employers and employees relating to the I-9 compliance process and the use of E-Verify. The tools are discussed below.

E-Verify Self Check — Great for Job Seekers

[E-Verify Self Check](#), launched on March 21, is a free online service that allows individuals to easily check their own employment eligibility status. It is currently available to residents of Arizona, Colorado, the District of Columbia, Idaho, Mississippi, and Virginia. More states will be added this year. If you live in one of these areas, try it yourself, or [view a demo](#). USCIS has added a new [E-Verify Self Check webinar](#) offering step-by-step instructions and information about employee rights.

E-Verify has revised the [Questions and Answers](#) section of www.dhs.gov/E-Verify with new and updated information that is now organized for easy reference.

Updated List of Federal Contractors Available

An updated list of federal contractors enrolled in E-Verify was posted in April 2011 and can be [viewed online](#).

I-9 Central is a tool dedicated to making guidance regarding Form I-9, Employment Eligibility Verification, more accessible and user-friendly. Form I-9 is the most accessed form on www.USCIS.gov. Now, I-9 Central provides one online location to keep employers and workers up to date with the information needed to properly complete Form I-9. Please visit www.uscis.gov/I-9Central.

Ahora en Español — Las Páginas de Contenido Web de E-Verify!

USCIS has posted the Spanish version of its E-Verify web pages! Please visit www.dhs.gov/e-verify-espanol to view important information in Spanish for both employees and employers. USCIS plans to expand these web pages with additional sections on an ongoing basis.

HAITI'S DESIGNATION FOR TPS CONTINUES

The Department of Homeland Security (DHS) announced the redesignation of Haiti for Temporary Protected Status (TPS) and extended the country's current TPS designation for another 18 months—through January 22, 2013. Haitian nationals who do not have TPS or a pending TPS application may file at any time but no later than November 15, 2011. Individuals who already have Haiti TPS must do so during the reregistration period, which opened up on May 23, 2011 and will remain open for 90 days until August 22, 2011. Employment Authorization Documents (EADs) for such beneficiaries will also be automatically extended. DHS also extended the suspension of regulatory requirements so certain Haitian F-1 students experiencing severe economic hardship may obtain employment authorization; this notice is effective July 22, 2011, through January 22, 2013.

USCIS ADDRESSES H-1B CAP EXEMPTIONS BASED ON RELATION OR AFFILIATION

On March 18, 2011, in response to stakeholder feedback, the USCIS announced that it is currently reviewing its policy on H-1B cap exemptions for nonprofit entities related to or affiliated with an institution of higher education. Until further guidance is issued, the USCIS is temporarily applying interim procedures to H-1B nonprofit entity petitions filed with the agency that seek an exemption from the statutory H-1B numerical cap based on an affiliation with or relation to an institution of higher education. During this interim period, USCIS will give deference to prior determinations made since June 6, 2006, that a nonprofit entity is related to or affiliated with an institution of higher education—absent any significant change in circumstances or a clear error in the prior adjudication—and, therefore, exempt from the H-1B statutory cap. The USCIS notes that the burden remains on the petitioner to show that its organization previously received approvals of its request for H-1B cap exemption as a nonprofit entity related to or affiliated with

an institution of higher education.

THE END OF THE NSEERS

On April 27, 2011, DHS announced the end of the National Security Entry-Exit Registration System (NSEERS) registration process. According to DHS, this is a critical step forward in its ongoing efforts to eliminate redundancies; streamline the collection of data for individuals entering or exiting the United States, regardless of nationality; and enhance the capabilities of the U.S.'s security personnel working every day to secure our nation. Through a notice published in the Federal Register, DHS is removing the list of countries whose nationals have been subject to NSEERS registration effectively ending the registration process.

EXPANSION OF STEM DEGREE LIST

Immigration and Customs Enforcement (ICE) announced an expanded list of science, technology, engineering, or math (STEM) degree programs that qualify eligible graduates to extend their postgraduate training, which is viewed as an important step forward in the Obama administration's continued commitment to fixing the immigration system and expanding access to the nation's pool of talented high skilled graduates in the science and technology fields.

The announcement follows President Obama's recent remarks in El Paso, Texas, where he reiterated his strong support for new policies that embrace talented students from other countries, who enrich the nation by working in science and technology jobs and by fueling innovation in their chosen fields here in the United States, as a part of comprehensive reform.

The expansion of the list of STEM degrees, which now include such fields as neuroscience, medical informatics, pharmaceuticals and drug design, mathematics, and computer science, tries to address shortages of talented scientists and technology experts in certain high-tech sectors, permitting highly skilled foreign graduates who wish to work in their field of study upon graduation and extend their postgraduate training in the United States.

Many foreign students who graduate from U.S. colleges and universities are able to remain in the U.S. and receive training through work experience called Optional Practical Training (OPT) for up to 12 months. Students who graduate with one of the newly expanded STEM degrees can remain for an additional 17 months on an OPT STEM extension.

SUMMER TRAVEL — PREPARE EARLY

Foreign national employees working in the U.S. on temporary nonimmigrant visas who intend to leave the U.S. and then return need to bring with them certain important documents, including their original Form I-797, Notice of Action, which is the USCIS's notice approving their nonimmigrant status (unless they have status under a Blanket L petition or otherwise applied directly at the consulate without an individual I-797, like some individuals in TN-2, E, or H-1B1 status); a copy of the approved I-129 petition, including all of its supporting documents; a letter from their current employer confirming employment, salary, and job title (job title should match the I-129 petition); their most recent pay statements from their employer; and a passport, valid for at least six months beyond the anticipated time of entry to the U.S. Employees should also verify they have a valid visa in their passport (Canadian nationals are not required to have visas).

Employees who need to apply for a U.S. visa at a U.S. embassy/consulate while outside of the U.S. should check with the embassy/consulate as soon as possible for available appointments and the necessary forms, fees, and photo requirements. They should expect possible delays due to a high volume of applications and required security checks. Employees in the green card process may be able to travel using their Advance Parole documents in lieu of a visa. Employees in H or L status who do not have Advance Parole and who are in the green card process with a

pending Form I-485, Application to Adjust Status to Permanent Resident, may be able to travel using a valid H or L visa. Although new guidance no longer requires the presentation of the Form I-485 receipt to U.S. immigration authorities, we suggest that, as a precaution, employees still carry this receipt with them when traveling.

It is advisable to be prepared for possible delays during the visa application process. Such delays could be triggered by the need for the consular officials to turn to the government's internal Petition Information Management System (PIMS), which stores information about the underlying petition and is used by the consular officials to confirm the underlying petition's validity, as well as the government's strengthened due diligence with regard to name checks. If the information in PIMS is not available, the consular officials must contact the Kentucky Consular Center for verification, which may delay the visa issuance process. With regard to name checks, the government is increasingly concerned about the potential deemed export of protected technologies and is exercising great due diligence with regard to name checks and watch lists. Therefore, visa applicants should bring a letter/form from their employer indicating the nature of the position and whether an Export Control License is required for this position if the applicant is in a technical position. Typically, if the applicant possesses education or experience in a discipline such as nuclear technology, supercomputers, global positioning systems, etc., that information appears on the U.S. government's technology alert list and could trigger the embassy officer's decision to seek extra security clearances. Some administrative processing delays cannot be avoided, unfortunately, because of a name "hit" when the government is data mining and finds a name on a watch list similar to the beneficiary's name. Applicants are encouraged to advise their employers of the potential of a substantial delay as part of the visa application process.

Immigration and consular officers have the discretion to ask for further documents, so travel plans should be flexible.

VISA BULLETIN FOR JULY 2011

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. Prospective immigrants can apply to become permanent residents only when a visa number is available in their 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 cutoff priority. Only applicants who have a priority date earlier than the cutoff date may be allotted a number.

The complete [Visa Bulletin is available at the Department of State's website](#). Below is an excerpt from the July 2011 Visa Bulletin pertaining to the employment-based categories.

Employment Based	All Chargeability Areas Except Those Listed	China - Mainland born	India	Mexico	Philippines
1st	C	C	C	C	C
2nd	C	08Mar07	08Mar07	C	C
3rd	08Oct05	01Jul04	01May02	01Jul05	08Oct05

Other Workers	22Nov04	22Apr03	01May02	22Nov04	22Nov04
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Targeted Employment Areas/Regional Centers and Pilot Programs	C	C	C	C	C

C - Current, U - Unavailable

CONTACT US

If you have any questions about the content in this legal update, contact one of the members of our Immigration Practice Group below. [Robinson & Cole's Immigration Practice Group](#) has experienced attorneys who have assisted clients with a wide range of immigration issues.

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