



WHY APRIL 1, 2008 IS AN IMPORTANT DATE

By Attorney Amit Dehra



OVERVIEW OF THE H-1B CATEGORY - H-1B Visa Defined

The H-1B nonimmigrant category is limited to alien workers filling positions in "specialty occupations". The occupation must require a bachelor's degree or equivalent for the application of theoretical and highly specialized knowledge. Similarly, the foreign worker must possess at least a bachelor's degree or its equivalent and state licensure, if required to practice in that field. H-1B work authorization is strictly limited to employment by the sponsoring employer.

AVAILABILITY OF H-1B NUMBERS (CAP SUBJECT)

The Immigration Act of 1990 imposed an annual limit on the number of new admissions in the H-1B category. The annual cap is set at 65,000. Out of 65,000, 6,800 H-1Bs are reserved for citizens of Chile and Singapore.

The United States Citizenship and Immigration Service (referred to as "Service" ongoing) counts petitions for initial H-1B employment in determining compliance with the annual cap. Each H-1B quota applies to a particular Financial Year which begins on October 1 of every year.

Applications for the upcoming Financial Year may be filed six months in advance, i.e., April 1 (or the first working day after that date). However, for all

practical reasons, the employer/employee must ensure that the H-1B application is received by USCIS on April 1st. This is because there is more demand and less availability for H-1Bs.

2007 CAP FIASCO

All H-1Bs were gone on the first available filing date.

Last year, as expected, the H-1B quota was reached on the first available filing date. However, based on the law, USCIS was required to select the H-1B applications received on the first two working days of April. A lottery was conducted and a sizeable chunk of applications were rejected. As a matter of fact, the USCIS claimed to have received more than 100,000 H-1B applications on April 2nd and 3rd of 2007, and subsequently, the H-1B cap was reached on April 3rd, 2007.

H-1B EMPLOYER EXEMPTIONS

We would also like to inform the readers that there are certain H-1Bs that are not counted against the cap (cap exemption H-1Bs).

Petitions for sequential H-1B employment, concurrent H-1B employment, H-1B extensions of stay, and amended petitions are not counted against the cap. An H-1B person who has been previously counted towards the cap in the six years prior to



approval of a new petition will not be counted again unless s/he has been outside the U.S. for one year or more and is seeking to return to the U.S. for a full six years.

Additionally, other H-1B categories which are not counted are persons who are employed, or who have received an offer of employment, by institutions of higher education or a related or affiliated nonprofit entity, as well as those employed, or who will be employed, by a non profit research organization or governmental research organization.

In addition, aliens who have earned a master's or higher degree from a U.S. institution of higher education are exempt from the H-1B visa cap (up to a maximum of 20,000 per year).

Once the 20,000 cap is reached, any employer seeking an alien who possesses a master's or higher degree will be subject to the 65,000 annual limit for H-1B non-immigrants unless the alien is eligible for another exemption. The Financial Year 2008 H-1B US Masters Degree Exemption Cap has been reached as of April 30, 2007.

OUR ADVICE: EMPLOYERS MUST BE PREPARED TO SUBMIT H-1B PETITIONS TO USCIS ON APRIL 1, 2008 – PRELIMINARY GROUND WORK SUCH AS HIRING, RETAIN-

ING A QUALIFIED IMMIGRATION ATTORNEY ETC. SHOULD BE DONE WELL IN ADVANCE.

On April 3, 2007, the 2008 Fiscal Year was reached. We need to learn a lesson from last year. In general, it is extremely important that employers be ready to submit their H-1B petitions with the U.S. Citizenship and Immigration Services on April 1, 2008, in order for their beneficiary(s) to be a part of the 65,000 annual numerical limitations.

To meet this deadline, employers must have already started interviewing candidates, if they have not done so already, short listing them and offering them a job.

The employer must also retain an attorney and submit all necessary paperwork to the attorney's office well in advance, ideally in late February or early March. The employer should provide their attorney with documentation regarding the employer such as a brief description of business, web site, if any, total number of employees, position and salary offered and alien credentials. This is because, as many of you already know, attorneys are busy preparing for H-1Bs in late February and early March as they want to make sure that all applications are received by USCIS on the first working date of April.

Furthermore, it is extremely important to hire a licensed Immigration Attorney and not immigration "consultants." Last year, we heard many stories where paperwork was not filed in a timely fashion by so called "consultants." Of course, they did not refund any money!

To sum this article up, it is time for H-1B employers and potential H-1B employees to retain a qualified Immigration Attorney, and forward the requested documents to their office at the very earliest.

Please note that all facts above are general in nature and that all cases are unique. Before making a decision on any legal matter on your own, you are advised to consult with an attorney.

Please send your questions to legal@citymasala.com.