



limited h-1b cap numbers remain, employers should plan ahead

January 18, 2011

The January 7, 2011 update from USCIS reports that the government has received 58,700 H-1B petitions against the annual 65,000 standard H-1B cap. Additionally, the government has reported that the advanced-degree exemption of 20,000 was reached on December 24, 2010. The 65,000 annual limitation on the number of H-1B visas numbers available is mandated by Congress and is often referred to as the "H-1B cap." At this point, although employers can still seek H-1B cap numbers for Fiscal Year (FY) 2011, all H-1B filings will now be counted against the standard cap. As a result, the remaining H-1B cap numbers are likely to be used up very quickly and employers are urged to plan accordingly.

MSK Remarks: Employers who still plan on filing an H-1B cap case for FY 2011 are urged to do so as quickly as possible. All new H-1B filings, including advanced-degree filings will now be counted against the standard H-1B cap and the remaining numbers are likely to be claimed within a very short period of time. Furthermore, since it takes up to seven business days to obtain a certified labor condition application (LCA) from the Department of Labor (a necessary pre-filing step), timing is now critical for any employer wishing to secure one of the few remaining FY 2011 H-1B cap numbers. Once the FY 2011 quota has been reached, employers will be able to start filing new cap-subject petitions starting on April 1, 2011, for an employment start date of October 1, 2011. The first day that FY 2012 H-1B cap numbers will be available is October 1, 2011.

Employers should also keep in mind that the United States - Chile and the United States - Singapore Free Trade Agreements allow for 6,800 of the 65,000 H-1B cap numbers to be set aside specifically for foreign national employees from those countries. Therefore, employers wishing to employ and employee who is a foreign national from Chile or Singapore may have additional options.

MSK Immigration Attorneys regularly counsel employers on immigration options available to a foreign national work staff and candidates for employment. As the remaining FY 2011 H-1B numbers are claimed, employers should contact immigration counsel to evaluate alternative immigration options for their foreign

practice areas

immigration

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national work staff, and to plan accordingly for FY 2012 H-1B filings.