



EMAIL BULLETIN

CONGRESS DROPS PROPOSED LEGISLATIVE PROVISIONS FOR THE “RECAPTURE” OF UNUSED H-1B NUMBERS FROM PREVIOUS FISCAL YEARS

Prepare Now for Filing H-1B Petitions in the First Week of April 2006

12 January 2006

In mid-December of last year, the U.S. House of Representatives passed a version of the supplemental budget bill that dropped Senate proposals to “recapture” approximately 300,000 unused H-1B visa numbers from previous fiscal years. Pursuant to a Senate Subcommittee proposal, the numbers were to have been allotted in increments of 30,000 per fiscal year for the next ten fiscal years. This measure would have resulted in a net increase of 30,000 H-1B numbers per fiscal year, thereby somewhat alleviating ongoing pressures on the annual H-1B cap. While the additional numbers would have come at the cost of increased filing fees, most H-1B program users would have welcomed the H-1B cap relief afforded by such measures.

With Congress’s failure to pass this much-needed H-1B cap relief, it is anticipated that the H-1B cap could be reached earlier for Fiscal Year 2007 (October 1, 2006 through September 30, 2007) than ever before. Petitions requesting a FY 2007 H-1B number may be filed no more than six months prior to the earliest anticipated start date of October 1, 2006. This means that employers must be ready to file H-1B petitions during the first week in April 2006 in order to maximize the opportunity to capture one of the limited H-1B numbers available for the next Fiscal Year.

Because of the anticipated rush of filings, Tindall & Foster recommends that employers identify their candidates for H-1B classification now, and that the company and beneficiary begin collecting all required information and documentation in advance in order to permit H-1B petition filing during the first week of April. Typical information and documentation required includes copies of diplomas and/or final transcripts, detailed job descriptions, and previous immigration documents.

Employers who have F-1 Students working pursuant to Optional Practical Training (OPT) are strongly urged to consider filing H-1B petitions on behalf of these candidates in early April 2006, even if the students have several months or a year of employment eligibility remaining under their OPT Employment Authorization Document (EAD) cards. OPT EAD cards are valid for one year, meaning students beginning OPT employment in June 2006 will exhaust their OPT employment authorization in June

2007. Employers who fail to secure a FY 2007 H-1B visa number when they become available for these affected employees will be unable to employ them between the expiration of their OPT EAD cards next summer and the beginning of Fiscal Year 2008 on October 1, 2007. This could mean several months without employment authorization.

In order to maximize the opportunity to obtain one of the limited FY 2007 H-1B numbers, and to avoid a potential gap in employment authorization ranging from several weeks to several months in 2007, employers should prepare now for filing H-1B petitions early in April 2006.

Employers are strongly urged to contact their Tindall & Foster immigration attorney now to begin strategy development and case initiation for H-1B petitions to be filed in April 2006. Tindall & Foster will monitor the availability of H-1B visa numbers for FY 2007 as the year progresses and will provide updates via future Email Bulletins and on our web site at www.tindallfoster.com/Immigration.