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**This Immigration Update<sup>®</sup> from FosterQuan, LLP contains important information regarding the following:**

### **FISCAL YEAR 2012 H-1B QUOTA LIKELY TO BE REACHED SOON**

U.S. Citizenship & Immigration Services (CIS) recently announced that, as of October 21, 2011, the CIS had received approximately 46,200 H-1B petitions to be counted toward the Fiscal Year 2012 (October 1, 2011 through September 30, 2012) H-1B Nonimmigrant Visa Quota. At the same time, the CIS announced that the 20,000 Advanced Degree Exempt Quota has been reached, meaning all new petitions filed for beneficiaries who qualify under the Advanced Degree Exemption must now be counted toward the regular H-1B quota.

#### Estimated Time Frame for Reaching H-1B Quota

Each fiscal year the regular H-1B quota is limited to 65,000. A portion of this quota is set aside for nationals of Chile and Singapore, though unused numbers from the previous fiscal year's set aside are available under the following fiscal year's quota. As of October 21, 2011, taking into account that some unused visas from the Chile/Singapore set-aside will be recaptured for this current fiscal year, we can estimate that only approximately 12,000 – 18,000 H-1B numbers remained available for the remainder of FY-2012.

With all new Advanced Degree Exempt cases counting under the regular H-1B cap going forward, practitioners expect additional strain on the regular FY-2012 H-1B cap. Already average weekly usage of H-1B numbers under the quota has more than doubled during the past few weeks. The latest estimates indicate the regular H-1B quota could be exhausted as early as the end of November 2011. When the information and data regarding H-1B usage rates become more widely circulated, we anticipate the possibility of even greater numbers of H-1B petition filings, as employers make every effort to secure one of the limited H-1B numbers remaining under the current fiscal year's quota.

#### What Happens When the Quota Is Reached?

Employers should act quickly to initiate new H-1B petitions before the H-1B quota is reached for the fiscal year. Once the quota is reached, no new H-1B petitions may be filed until April 1, 2012, requesting an October 1, 2012 H-1B start date.

#### Lead Time for H-1B Petition Filing

Before the H-1B petition can be filed, a Labor Condition Application (LCA) must be filed with the U.S. Department of Labor (DOL) and must be certified. The DOL currently takes approximately 5-7 business days to certify LCAs. For this reason, employers should not delay the initiation of H-1B petition filings.

## Who Are the Most Critical Candidates for H-1B Petition Filings?

The most critical candidates for the H-1B petitioning process are those F-1 students who are employed pursuant to F-1 Optional Practical Training (OPT) Employment Authorization Document (EAD) cards which will expire before April 1, 2012. Failure to secure an FY-2012 H-1B number for these employees would result in a gap in employment authorization.

Additionally, individuals who are employed pursuant to F-1 OPT EAD cards which will expire before October 1, 2012 are candidates for H-1B petition filings at this time. Under certain circumstances, failure to secure an FY-2012 H-1B number for these employees may result in an interruption in travel schedules and the ability to travel and reenter the United States during the summer of 2012.

The H-1B quota does not apply to H-1B extension petitions. Most H-1B change-of-employer petitions are also exempt. For new petitions which are subject to the H-1B quota, employers are encouraged to contact their FosterQuan immigration attorney now to initiate the H-1B petitioning process. As always, FosterQuan will continue to monitor the availability of H-1B visa numbers and will make further information available in future Immigration Updates© and on our website at [www.fosterquan.com](http://www.fosterquan.com).