



Saturday, March 22, 2008

U.S. DHS PUBLISHES REGULATION PUNISHING MULTIPLE H-1B PETITION FILINGS BY THE SAME EMPLOYER ON BEHALF OF THE SAME H-1B BENEFICIARY

Beginning March 31, 2008, it will be possible to file H-1B nonimmigrant visa petitions seeking Fiscal Year 2009 (October 1, 2008 through September 30, 2009) H-1B numbers for individuals qualified for employment in a Specialty Occupation, one that ordinarily requires a Bachelors Degree or its equivalent. Because the H-1B numbers for Fiscal Year 2009 are expected to be exhausted on the first day that filings are accepted, it is important for employers to file H-1B petitions on March 31, 2008, for receipt at U.S. Citizenship & Immigration Services (CIS) on April 1, 2008.

Because the H-1B visa quota was reached on the first day that filings were accepted for Fiscal Year 2008 visa numbers, the CIS has published regulations implementing procedural changes with respect to the application of the numeric selection process for both the U.S. "Masters Degree" cap (20,000) and the standard H-1B cap (58,200).

Pursuant to new CIS regulation, multiple filings by the same employer on behalf of the same H-1B beneficiary are prohibited. The CIS will deny all such "multiple" petitions and will not refund filing fees for those petitions.

Additionally, under the new regulation, if the CIS receives enough Masters Cap cases within the first five business days that filings are accepted, the CIS will apply a random numeric selection process, or "lottery," to all such petitions received during the first five business days. Any H-1B Masters Cap cases not awarded a Masters Cap number will be entered into the lottery for the standard H-1B cap along with all other petitions received during the first five business days that filings are accepted. This means that Masters Cap qualifiers need not file two petitions, which is now prohibited by regulation, in order to get two chances for award of an H-1B number.

The new regulation essentially creates a broader window of opportunity for filing H-1B petitions, five business days rather than the two business days in 2007. If your company has identified new potential H-1B candidates, it is not too late to act to maximize the opportunity to secure an H-1B number under the quota system. Contact your Tindall & Foster immigration attorney now for assistance in evaluating candidate eligibility, developing an appropriate case strategy, and preparing the necessary documents for filing an H-1B petition during the first week in April 2008.