



Monday, December 10, 2007

PLAN NOW FOR FISCAL YEAR 2009 H-1B PETITIONS TO BE FILED IN APRIL 2008; IDENTIFY CANDIDATES EARLY AND CONTACT TINDALL & FOSTER, P.C. NOW TO INITIATE H-1B CASE PREPARATION FOR NEW PETITION FILINGS

Beginning April 1, 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 plan now for filing H-1B petitions on early April 1, 2008, for candidates to begin employment on October 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 considered procedural changes with respect to the application of the numeric selection process (“lottery”) for assigning limited numbers to the many anticipated filings. Because not every petition will be selected for a number in the “lottery”, the CIS is considering alternative “lottery” procedures that could potentially force application of the numeric selection process prior to the April 1, 2008 filing date. Due to the potential for a last minute procedural change, it is important that employers identify H-1B candidates even earlier this year than last year.

Employers who have F-1 Students who have already begun employment or who will begin employment between now and October pursuant to Optional Practical Training (OPT) are strongly urged to file H-1B petitions on behalf of these candidates on April 1st, even though the students may have almost a year of employment eligibility remaining pursuant to their OPT Employment Authorization Document (EAD) cards. OPT EAD cards are valid for one year, meaning students beginning OPT employment in June 2008 will exhaust their OPT employment authorization in June 2009. Employers who fail to secure a Fiscal Year 2009 H-1B visa number for these affected employees may be unable to employ them between the expiration of their OPT EAD cards in June 2009 and the beginning of Fiscal Year 2010 on October 1, 2009.

In order to maximize the opportunity to obtain one of the limited H-1B numbers for Fiscal Year 2009, and to avoid a potential gap in employment authorization ranging from several weeks to several months in 2009, employers are encouraged to begin now to identify those employees for whom H-1B petitions will be required, to anticipate potential changes in application of the H-1B “lottery”, and to prepare for filing H-1B petitions on April 1, 2008. Employers should not wait until April to collect the necessary documents and initiate the H-1B petitioning process. The first day of April is the target for filing new petitions; therefore,

petitions should be prepared and may possibly be subjected to “lottery” well in advance of April 1, 2008. Contact your Tindall & Foster immigration attorney now for early assistance in evaluating candidate eligibility, developing an appropriate case strategy, and preparing the necessary documents for filing an April 1st filing.