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1. U.S. CITIZENSHIP & IMMIGRATION SERVICES (CIS) CONTINUES TO ACCEPT H-1B PETITIONS UNDER THE REGULAR AND “MASTERS” CAPS

On April 23, 2010, U.S. Citizenship & Immigration Services (CIS) announced that, as of April 15, 2010, the CIS had received approximately 13,600 H-1B petitions that were counted under the regular 65,000 H-1B cap, and approximately 5,800 H-1B petitions that were counted under the additional 20,000 “Masters” cap for Fiscal Year 2011.

H-1B usage continues to lag behind previous years, and it is expected that H-1B visas will remain available for several more months. It is possible that a spike in H-1B filings could occur in May and June, following the Spring graduation dates, when additional F-1 students will meet the Bachelors degree requirement for H-1B petitions and will formally enter the job market.

Avoiding the “Cap Gap” in Employment Authorization

Although H-1B numbers remain readily available, it is important to pursue H-1B petitions as soon as possible for any F-1 students who might otherwise experience a “gap” in employment authorization upon the expiration of their Optional Practical Training Employment Authorization Document (EAD) cards.

Students who have EAD cards that will expire during the summer will need to have an H-1B petition filed on their behalf prior to the expiration of their EAD cards in order to take advantage of the automatic “extension” of their employment authorization through October 1, 2010, the beginning of Fiscal Year 2011, and the first day of FY-2011 H-1B petition validity.

To initiate a new H-1B petition, or for assistance in evaluating other visa options for existing employees and new hire candidates, please contact your FosterQuan immigration attorney. As always, FosterQuan will continue to monitor H-1B visa availability and will make future information available via future Immigration Updates[©] as appropriate, and on our firm’s website at www.fosterquan.com.

2. U.S. DEPARTMENT OF STATE PUBLISHES THE MAY 2010 VISA BULLETIN AND PROVIDES ADDITIONAL EXPLANATION OF VISA USAGE UNDER THE IMMIGRANT QUOTA SYSTEM

Each month the U.S. Department of State (DOS) publishes the [Monthly Visa Bulletin](#), reporting current immigrant visa availability under the annual quota system for U.S. immigration. In the May 2010 Visa Bulletin, the U.S. DOS reports temporary unavailability of immigrant visas under the Employment-Based, Third Preference (EB-3) and “Other Worker” categories for persons born in Mexico. Because the annual quota has been reached for persons born in Mexico who are applying under these immigrant categories, the categories will remain unavailable until October 2010, the beginning of the new fiscal year. The May 2010 Visa Bulletin also shows continued backlogs in the EB-3 category for all countries of birth, and in the EB-2 category for persons born in India or China.

For more information on beginning the permanent residency process and establishing a priority date under the appropriate immigrant category for one or more foreign national employees, please contact your FosterQuan immigration attorney.

3. U.S. CITIZENSHIP & IMMIGRATION SERVICES (CIS) PLANS TO PROPOSE FILING FEE INCREASES IN JUNE

On Monday, April 26, 2010, the U.S. Department of Homeland Security published in the Federal Register the Semi-Annual Regulatory Agenda for agencies within the Department. The Agenda includes regulations likely to be proposed or finally promulgated during the next six months.

U.S. Citizenship & Immigration Services (CIS) plans to propose filing fee increases for petitions and applications for immigration benefits in June. The agency cites a decline in filings and revenues over the past year, which has left the agency with insufficient funds to finance the full cost of operations.

The CIS also plans to issue a proposed rule which would impact the filing process for H-1B petitions subject to the annual H-1B cap (generally new, first-time H-1B petitions for a particular beneficiary). Because the H-1B cap is often reached within the first few days of the filing period for new H-1B petitions, the CIS plans to propose a rule that would streamline the registration of companies and petitions under the cap for entry into the “lottery” before requiring the full petition filing to be submitted.

As always, FosterQuan will continue to monitor changes in government filing fees and procedures and will make additional information available via future Immigration Updates© and on our firm’s website at www.fosterquan.com.