



Office of Communications

**U.S. Citizenship
and Immigration
Services**

August 2, 2007

USCIS Update

USCIS URGES H-2B EMPLOYERS TO CONTINUE TO IDENTIFY “RETURNING WORKERS” ON PETITIONS FOR FISCAL YEAR (FY) 2008 START DATES

WASHINGTON— U.S. Citizenship and Immigration Services (USCIS) reminds employers who use the H-2B nonimmigrant visa program to fill their temporary labor workforce needs that the “returning worker” provisions initially enacted in the “Save Our Small and Seasonal Businesses Act of 2005” (“SOS Act”) expire on September 30, 2007. The “returning worker” provisions exempt from the annual H-2B fiscal year cap those aliens who were counted toward the H-2B numerical limit during any one of the three fiscal years preceding the fiscal year of the requested employment start date.

Under current law, employers who file H-2B petitions identify and certify those workers who qualify as “returning workers.” USCIS has begun to receive petitions from employers requesting H-2B workers for employment start dates in FY2008. It is uncertain whether the H-2B “returning worker” provisions will be extended by Congress. However, USCIS is urging prospective H-2B employers to continue to identify and certify those workers who qualify as “returning workers” when filing petitions for employment start dates in FY2008. This will enable USCIS to adjust the counting of H-2B nonimmigrant workers for FY2008 appropriately should the “returning worker” provisions be further extended.

USCIS notes that the controlling date for H-2B fiscal year cap counting is the requested employment start date. Therefore, petitions filed by prospective H-2B employers for “returning workers” with requested employment start dates of September 30, 2007 or earlier will continue to be approved by USCIS if all other eligibility requirements are met, and those “returning workers” identified and certified within such petitions will be deemed exempt from the FY2007 cap.

As a result of the expiration of the “returning worker” provisions, however, all petitions requesting H-2B workers for new employment with an employment start date of October 1, 2007 or later (e.g. FY2008 employment) will be counted toward the annual H-2B cap of 66,000 for FY2008, whether or not they would be recognized as H-2B “returning workers” under the provisions of law currently applicable to FY2007 start dates. In the event that the “returning worker” provisions are reauthorized for FY2008, and if employers continue to identify and certify “returning workers” in their H-2B filings, USCIS will be able to identify appropriate individuals as cap exempt and thus adjust its running cap counts for H-2B accordingly, making more numbers available to other workers. If Congress has not extended the “returning worker” provisions by the time USCIS reaches the 33,000 cap for H-2B workers (including those provisionally designated as “returning workers”) for the first half of FY2008, USCIS will announce that the cap has been reached and will reject further cap-subject H-2B filings.



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Petitions for current H-2B workers do not count towards the congressionally mandated H-2B cap. Accordingly, USCIS will continue to process petitions filed to:

- Extend the stay of a current H-2B worker in the United States.
- Change the terms of employment for current H-2B workers.
- Allow current H-2B workers to change or add employers.

More information about the cap counting methods for H-2B petitions can be obtained at www.USCIS.gov or from the National Customer Service Center toll-free number: 800-375-5283.

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