

GUNSTER IMMIGRATION NEWS BULLETIN
From the Immigration Practice Group

H-1B Filing Period for October 1, 2007 Start Date Commences April 1, 2007

We wish to remind employers that April 1, 2007 is the first day USCIS will accept H-1B petitions filed on behalf of nonimmigrant employees for the fiscal year starting October 1, 2007. On this day, adjudications will open for the 65,000 general H-1B numbers and 20,000 H-1B numbers for nonimmigrants with Masters Degrees from U.S. institutions, which are allotted each year by Congress. Of the 65,000, 6,800 are reserved for Chile and Singapore Free Trade H-1B visas, resulting in 58,200 for all other nationalities. Although employers can file on April 1, 2007, they cannot request a start date earlier than October 1, 2007.

Last H-1B filing cycle, H-1B numbers were depleted in record time. The door opened for filing of new H-1B petitions on April 1, 2006 and, by May 26, 2006, USCIS had accounted for all 58,200 general H-1B numbers. By July 26, 2006, the 20,000 cap on H-1B numbers reserved for non-immigrants with Master's Degrees from U.S. institutions was reached. As such, we urge our client employers to contact us regarding any potential H-1B candidates, so that plans can be made to file as early as possible in the new filing cycle. In addition to potential new hires, employers should pay particular attention to F-1 students working on grants of Optional Practical Training (OPT) who may need to transition to H-1B status.

Please note that petitions for *current H-1B workers do not count* towards the Congressionally mandated H-1B cap. For example, subject to certain exceptions, the following petitions can be filed at any time with any start date:

- Extensions of stay requests on behalf of workers currently in H-1B status;
- Amendments to H-1B petitions requesting a change the terms of employment for current H-1B workers; and,
- Change of employer petitions for individuals already in H-1B status.

In addition, petitions for new H-1B employment are not subject to the annual cap if the foreign national will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization.

It is important for employers who rely on H-1B visas to consult with immigration counsel in order to take advantage of the H-1B numbers while they are available, and to carefully analyze those circumstances in which cap exemptions might be claimed.

We want all clients to be aware that there has been and will continue to be increased scrutiny on all immigration fronts for the foreseeable future. Immigration laws and policies are in flux and practices and procedures that were routine for many years are now changing. Human Resources Directors and Managers need to remain informed, as do foreign employees that the company may be sponsoring. This advisory is not legal advice and does not substitute for legal advice in an individual case. If you have any questions concerning these changes or any other procedures or policies concerning foreign nationals within your company, please contact:

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