USCIS to Accept Cap-Subject H-1B Specialty Occupation Visa Petitions on April 3, 2017

On Monday, April 3, 2017 US Citizenship and Immigration Services (USCIS) will begin accepting filings of H-1B specialty occupation visa petitions for employment in the fiscal year 2018 (FY 2018). It is important for employers to submit H-1B petitions as early as possible for new and existing employees eligible for a first-time H-1B visa to begin employment in FY 2018 (i.e., on or after October 1, 2017).

Congress has established a strict cap of 65,000 H-1B visas that may be issued, with an additional 20,000 visas available for applicants with advanced degrees from US colleges or universities. Furthermore, 6,800 visas are set aside from the 65,000 for Chile and Singapore nationals' H-1B1 visas. Specialty workers of certain educational and research institutions, as well as some workers in Guam and the Commonwealth of the Northern Mariana Islands, may be exempt from the cap.

Despite their limited availability, demand for H-1B visas has been growing. In 2016, the USCIS received 236,000 H-1B petitions for FY 2017, including petitions for the advanced degree exemption. All of the petitions were received between April 1 and April 7 of 2016, at which point the USCIS closed the filing period. As a result of the massive influx of petitions, the USCIS utilized a lottery system to randomly select petitions for adjudication.

The demand for H-1B visas this year will likely be the same as, if not greater than, it was in 2016. Therefore, if the number of petitions received by the USCIS again exceeds the numerical cap, which is expected, then only those petitions that are submitted within the first five work days of April will be eligible for the H-1B lottery. If a petition is not selected, or submitted after the final receipt date, the petition will be rejected.

As a reminder, the government's "cap-gap" relief allows F-1 student visa holders with Optional Practical Training (OPT) work authorization (via EAD card) to automatically extend their expiring period of stay and work authorization as long as they have a pending or approved cap-subject H-1B petition that was filed with the USCIS prior to their OPT expiration. If their H-1B petition is selected for adjudication and approved, cap gap usually extends from the date of EAD expiration until the October 1 change to H-1B status. Further, cap-gap benefits require action by the student's school to update the student's Form I-20, Certificate of Eligibility for Nonimmigrant Student Status and may impose travel restrictions on the student during the period between the end of the student's OPT period and their transition to H-1B status.

Early action in preparing H-1B petitions is becoming increasingly important with the likely five-day petition submission period and increased demand for H-1B visas. Employers should begin preparing H-1B filings well in advance of April 3, 2017. Prior planning will help avoid any unforeseen problems in the process to ensure timely H-1B filings.

Employers should also brace for potential changes in USCIS processes or new laws that could impact the H-1B visa category. At this time, USCIS has not announced or implemented any specific changes impacting FY 2018 filings.

If you have any questions, or would like more information regarding H-1B petitions or immigration developments, please contact your designated Squire Patton Boggs lawyer or one of the individuals listed in this publication.

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