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immigration

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# Overview

- **Prospects for Immigration Reform**
- **Immigration-Related Hiring and Retention: The H-1B Cap Challenge**

# Prospects for Business Immigration Reform in 2008

We need Legislation Reform to:

- Increase the H-1B Cap
- Reduce the Waiting Time for Employment-Based Green Cards
- Eliminate the Obstacles to Hiring Talented Foreign Workers in the U.S., particularly in the STEM fields
- Make it Easier for Graduates of U.S. Universities to Remain Here

# Will Business Immigration Reform Occur in 2008?

Short Answer: NO

Why Not?

- Election Year – Immigration is a Political Hot Potato
- Lack of Compromise Between Legalization and Border Closing Camps
- Comprehensive Immigration Reform Initiative Failed Last Year: No one Wants to Repeat Experience
- Security Concerns
- Offshoring/Outsourcing Concerns

# The H-1B Cap Challenge: What is the H-1B?

- A Nonimmigrant Visa That Allows Employment in the U.S.
- Available to “Specialty Occupation” Workers
- Must Have a Bachelor’s Degree, License or Equivalent Experience
- Must be Paid the Prevailing Wage for Geographical Location
- Significant Government Fees Involved: over \$2200, Depending on Size of Employer

# The Basic Numerical Limitations

The Problem: Only 65,000 New H-1B Petition Approvals Available Per Year (October 1 to September 30)

- 65,000 Limit was set in 1990
- Increased in 1998 to 115,000
- Increased in 2001 to 195,000
- Reverted to 65,000 in 2004

The Cap for Holders of U.S. Master's or Higher Degree is 20,000

# Compounding the Cap Problem

## What Makes the Problem Worse:

- **Actual number is lower (Deduct 6800 for Singapore and Chile FTAs)**
- **Demand far exceeds supply**
- **Cap will be reached instantly on April 1 (First Day of the H-1B Filing Season)**
- **The “Gap in the Cap” problem – no relief available**

# FY2008- What Happened?

- USCIS received enough petitions to reach the FY08 cap of 65,000 on Monday, April 2, 2007, and set that date as the final receipt date
- Total number of cap-subject petitions received on April 2 and April 3 was 123,480
- Petitions were receipted and subject to a random lottery on April 12, 2007.
- 20,000 Advanced degree cap was reached on April 30, 2007

# FY2009- What to Expect

- Many expect the volume of H-1B petitions to be even greater this year.
- No doubt that the cap will be reached on April 1; all petitions should be filed on March 31 for next day receipt by USCIS.
- Another Lottery Will Take Place – 1/3 Chance of Success
- 20,000 Advanced degree cap expected to be reached much sooner this year

# Which H-1B Petitions Are Subject to the Caps?

**Only NEW H-1B Petitions are Subject to the Cap**

- **H-1B Petitions Not Subject to 65,000/20,000 Caps:**
  - **H-1B change of employer/extension petitions**
  - **Nonimmigrants who have held H-1B status during previous six years even if not currently in H-1B status and even if outside the U.S. (the “dormant” H-1B)**

# Exempt H-1B Petitioners

## H-1B Workers Working for Certain Employers are NOT Subject to the 65,000/20,000 Caps

- Institutions of Higher Education
- Affiliated or Related Non-Profit Entity (includes hospitals and medical research institutions)
- Non-Profit Research Institutions (Primarily Engaged in Basic Research and/or Applied Research)

NOTE: Such Workers WILL Become Subject to the Caps if Seek to Join a Private Employer (if “cease to be employed” at Exempt Employer)

# What Do You Do If Your Petition Is Not Chosen In The Lottery?

## Find another visa category:

### Privileged Nationalities

- H-1B1 for Chileans, Singaporeans
- E-3 for Australians
- TN for Mexicans and Canadians

### Non-Privileged Nationalities

- O-1 Extraordinary Ability
- J-1 Exchange Visitor – recent changes in J-1 regulations make this a less attractive option (Limited to Interns and Trainees)
- B-1 Visitor for Business – but be very careful

# Managing The H-1B Cap Challenge

- File as early as possible in the cycle  
April 1, 2008, for an October 1, 2008, start date  
Filing on April 1 does not guarantee that the case will be accepted.  
--Ignore pleas from F-1 Students
- Don't File More Than One Petition for the Same Individual
- Demand a raising of the H-1B Caps by Congress  
Despite crisis last year, nothing has been done by Congress to remedy the situation – The Tata/Infosys Problem

# Premium Processing

- Payment of \$1000 Fee Guarantees Processing Within 15 Calendar Days
- Premium Processing does not increase the chances of a petition being selected in the lottery for processing.
- We recommend Premium Processing because it allows for easier tracking of the case and provides quicker resolution to the cap issue.
- Premium Processing may be suspended temporarily; for FY08, the Premium Processing clock started on April 12.

# Degree/License Issues

- Must have necessary degree and/or license in hand at time H-1B petition is filed
- Graduation will usually be in June/July
- Serious problem for Bachelor's graduates
- Lesser problem for advanced degree graduates
- Can obtain Registrar's letter certifying completion of all degree requirements
- One-Year Provision for Persons Without License

# The “Cap Gap”

- Many F-1 students working on an EAD find themselves with a gap between the expiration of their EAD and the October 1 start date of their H-1B petition.
- F-1 students have a **60-day grace period**, during which time they may remain in the US after their EAD expires; they **do not** have work authorization during this period
- If October 1 does not fall within the grace period, the individual must leave the US and may not return sooner than September 20, to begin work on October 1.

# Avoiding/Dealing With the “Cap Gap”

- Delay the F-1 Student’s Graduation
- Be Careful of Attempts to Change Status and Remain in the U.S.
- Overseas Assignment if Possible

# Travel Issues for H-1Bs Between April and October

- No travel outside of US while H-1B COS pending
- May travel after COS approval, even with 10/1/2008 start date
- Make sure beneficiary has documents for readmission
- Possible SEVIS Issue
- May enter US in H-1B status 10 days before 10/1/2008, but no work authorization

**Thank you.**