

USCIS To Allow 20,000 New H-1B Filings for this Fiscal Year

The United States Citizenship and Immigration Services (USCIS) has announced what could be significant relief for employers and foreign nationals affected by the H-1B cap for fiscal year 2005.

As you may know, the USCIS reached its cap for new H-1B approvals for FY2005 on October 1, 2004. On December 8, 2004, President Bush signed legislation providing an exception to the annual H-1B limitation of 65,000 for foreign nationals who have earned a Master's degree or higher from a U.S. institution of higher education. For such persons, there will be a separate annual limit of 20,000. This change was scheduled to go into effect on March 8, 2005. Employers had anticipated that, beginning on that date, new petitions could be filed exempt from the current year's H-1B cap for beneficiaries with the U.S. master's degree or higher.

In an unexpected twist, USCIS has now announced that, in implementing the new law for this year, the 20,000 additional H-1B slots will be available to **all** qualified H-1B nonimmigrants and will **not** be limited to individuals holding a U.S. master's degree or higher degree qualification. The rationale for this interpretation would appear to be an intention to "recapture" H-1B numbers already used earlier in this fiscal year for petitions that would have qualified for this advanced degree exemption. In effect, the H-1B cap will be "reopened" for 20,000 more numbers to be generally available.

Despite the fact that the effective date of March 8, 2005 for the new law has passed, USCIS has instructed employers not to file petitions that seek the benefit of the exemption and its implementation until a more formal announcement is made in the *Federal Register*. We expect that announcement to occur soon and we also expect the available 20,000 slots to be used up almost immediately after USCIS begins accepting petitions.

Therefore, if you have an employee or prospective employee who could benefit from this opportunity for an H-1B visa, **please contact us immediately.**

If you have questions please feel free to contact a member of the Foley Hoag LLP Immigration Practice Group.

Kevin J. Fitzgerald	617.832.1122 kfitzgerald@foleyhoag.com
George N. Lester	617.832.1212 glester@foleyhoag.com
Punam Rogers	617.832.1207 progers@foleyhoag.com