



Business Immigration

Spring 2004

An Update

Coping with the CAP - Planning Ahead Will Make A Difference

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H - 1 B numbers ran out on February 17th this year. The United States Citizenship and Immigration Services [U.S.C.I.S formerly known as INS] follows a fiscal year from October 1st to September 30th. The 65,000 H-1B numbers available for FY 2004 is down from 195,000 last year. Unfortunately, the Service has no means of knowing [read “has never bothered to ascertain”] how many H-1Bs are enough. The available quota is based on an arbitrary count dating back some 10 years.

New Attorney on the Block

- *Yasmin A. Blackburn, Esq.*

The newest member on our staff is Yasmin Blackburn. Recently admitted to the NY Bar, Yasmin brings an international flavor to the Firm. A graduate of Temple University, Yasmin participated in international programs in Italy and Japan as part of her JD and has a keen interest in Business Immigration.

The DotCom boom and intense lobbying by technology firms helped increase numbers in 1999. However, no effort was made even at that time to determine if the 195,000 was a reasonable number given the demand for technology professionals. What is interesting is that the



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Service never reached the cap in any of the years when visa numbers were at the increased level. In other words, demand never exceeded supply!

Clearly, neither Congress, nor the present administration have deemed it necessary to revisit the issue. In an election year when the hot topic on Sunday morning talk shows are the lagging economy and rampant unemployment, nonimmigrant issues are bound to take a backseat. How then should you prepare for a repeat of last year?

More specifically, H-1B visa numbers are not likely to last beyond the second week of July !

At current levels of usage, approximately 14,445 visas are likely to be used up each month. In other words, for FY 2005, only 50,000 visas remain. More specifically, H-1B visa numbers are not likely to last beyond the second week of July 2004!

So, it is imperative that you plan ahead. If your business will require H-1B talent, the time to petition is now.

However, the INA subjects to the cap individuals who are changing from a cap-exempt employer to a cap-subject employer

In counting numbers against the cap, individuals who have been counted toward an H-1B cap within the past six years are not subject to the cap unless they would be eligible for another full six years of

admission (i.e., unless they have been outside the U.S. for at least one year).

Always exempt are petitions filed to extend status, change terms of employment, change employers, or work concurrently in a second H-1B position. However, the INA subjects to the cap individuals who are changing from a

cap-exempt employer to a cap-subject employer. Also exempt from the H-1B cap are individuals who will work at an institution of higher education or a related or affiliated non-profit entity, or at a nonprofit research organization or a governmental research organization

INS Filing Fee Increase on April 30th

INS Filing Fees for several petitions are set to increase on April 30th. All fee increases are between \$50.00 - \$55.00 more than current fee levels. For a list see www.kidambi.com/www/news/whatsnew.htm#apr26

President Bush's New Immigration Policy

On January 7, 2004, President Bush unveiled a reform plan designed to give undocumented aliens the opportunity to secure the right to work in the United States. Under the proposal, a three-year [potentially renewable] program will feature foreign born workers being paired with U.S. workers unable to fill jobs locally. Undocumented U.S. workers already in the U.S. may pay a fee and remain in their current jobs. Participants who lose their jobs, or otherwise violate the rules of the program would be ineligible to participate in the future.

Employers would be required to:

- Make every reasonable effort to find an American worker for an available position, and
- Agree not to hire undocumented aliens for any future position.

Finally, the reform plan will include bilateral agreements with participating countries to encourage temporary workers to return to their home countries by offering them retirement benefits and allowing contributions to tax-preferred savings accounts.

