

H-1B ALERT

20,000 Additional H-1B Visas for the 2005 Fiscal Year are Available as of May 12, 2005 - Available Only to Foreign Nationals with a U.S. Master's Degree or Higher

The number of new H-1B nonimmigrants is currently capped at 65,000 for each fiscal year of the U.S. Citizenship and Immigration Service ("USCIS") – the USCIS fiscal year runs from October 1st to September 30th. The H-1B cap for the 2005 fiscal year (starting October 1, 2004) was in fact reached on October 1, 2004. This past December, Congress provided an additional 20,000 H-1B visas for foreign nationals who had received a Master's degree or higher from a U.S. educational institution. Congress provided that these new visas would first become available on March 8, 2005.

In early March, the USCIS issued a notice indicating that no new H-1B visa petitions could be filed for the additional 20,000 H-1B visas until the USCIS promulgated implementing regulations. At that time, the USCIS also indicated that these 20,000 additional visas would be available not only to those persons with a U.S. Master's degree or higher but would also be available to any foreign national who is otherwise eligible for H-1B status.

On May 5, 2005, the USCIS finally issued its implementing regulations for these additional 20,000 H-1B visas. Under the terms of the regulations, petitions for these additional visas can be filed on May 12th. Significantly, the regulations clarify that the additional H-1B visas will be available only to persons who have a U.S. Master's degree or higher, reversing their prior announcement.

There is a significant pent-up demand for these additional 20,000 H-1B visas. We currently expect that they will be used up quickly, possibly within just a few days of May 12th. H-1B visa petitions that are received after the 20,000 cap is met will be automatically allocated to the 2006 fiscal year and assigned a start

date of October 1, 2005. If the USCIS receives more than 20,000 H-1B visa petitions on May 12th or on any subsequent day, then the agency will use a random selection process to determine which cases will be allocated the 20,000 visas and which will be allocated to the 2006 fiscal year.

Because of the likely extremely short window of opportunity for obtaining these 20,000 additional H-1B visas, we are urging our clients to file any H-1B visa petitions that are eligible for these additional 20,000 visas by overnight mail no later than May 11th.

Note that cases that have already been filed against the 2006 fiscal year quota (i.e., with a start date of October 1, 2005) and that are eligible for these additional 20,000 H-1B visas, may be converted to an application for one of these additional visas. USCIS will also accept conversion applications beginning on May 12th.

H-1B Petitions for the 2006 Fiscal Year (Beginning October 1, 2005) Can Now Be Filed – The 2006 H-1B Quota Could Be Reached as Early as This Summer

Finally, it is important to note that new H-1B cases that will be counted against the 2006 fiscal year (and thus must have a start date of no earlier than October 1, 2005) can now be filed with the USCIS. We currently expect that the demand for the 2006 fiscal year H-1B visas will be high and that the 2006 cap could be reached at some point this Summer. Accordingly, we are advising our clients to prepare and file new H-1B cases now for the 2006 quota. This recommendation applies especially to employees that you may have who are currently on F-1 or J-1 student or scholar visas and are employed on a period of Optional Practical Training that will end at some point in the coming year.

Please contact Donald Parker (dwp@mabbp.com) to discuss whether the 20,000 additional H-1B visas may apply to any of your employees.