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## Immigration Update: H-1B Visas and Other Critical Developments

By Nancy-Jo Merritt

### H-1B WORK AUTHORIZATION NEARS ITS LIMIT

The H-1B work authorization Category has a “cap,” an annual quota of 58,200 initial petitions (65,000 minus 6800 set aside for beneficiaries of the U.S. – Chile or Singapore Free Trade Agreements) plus an additional 20,000 slots for foreign workers with advanced degrees from U.S. universities. As in prior years, the limited amount of H-1B slots for this year’s initial petitions are being used up fairly quickly. This year, due to the increased availability of jobs in the expanding economy, H-1B petitions are being filed in increased numbers. It appears that the remaining H-1B slots will be used up within the next weeks.

We strongly suggest that if any of your current employees are F-1 students with practical training work authorization, or in TN status that needs to be changed to H-1B for permanent residence processing, or if you have a new hire in mind who will need H-1B work authorization, those petitions should be filed *immediately*.

Once again, the H-1B quota for the U.S. 2007 fiscal year, beginning October 1, 2006, will have been depleted months before the fiscal year begins. Additional numbers will not be available for positions beginning October 1, 2007. Congress has been toying with creating “carve-outs” from the H-1B quota, which would have the effect of increasing the availability of H-1B positions, but to date no action has been taken.

Remember, there are other work authorization categories, which in certain circumstances can substitute for the H-1B. These include the TN for certain occupations to be filled by Mexican or Canadian citizens, the L-1 for international transferees, and the O-1 for extraordinarily skilled individuals. Call us for more information on these options.

### U.S. SENATE APPROVES COMPREHENSIVE IMMIGRATION REFORM BILL

Last week, the Senate voted 62 to 36 to approve its version of immigration reform (S.2611, the Comprehensive Immigration Reform Act of 2006), setting the stage for what will likely be a contentious House/Senate conference, in which the Senate-passed bill will have to be harmonized with the strong, enforcement-only bill (H.R. 4437) passed by the House in December.

The Senate bill includes a path to permanent legal status for most of the 12 million undocumented immigrants in the country, a new temporary worker program, significant increases in family- and employment-based permanent visas, important reforms to the agricultural worker program, significant reforms to the high-skilled immigration categories, and relief for undocumented high school graduates (DREAM

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Act). The bill also includes some very strong enforcement provisions and an unfortunate erosion of due process protections.

## PREMIUM PROCESSING TO BE EXTENDED

An extension of expedited “premium processing” rules to immigrant visa (green card) petitions (Form I-140), applications for change of nonimmigrant status (Form I-539), and applications to renew employment authorization documents for employees with pending adjustment of status applications (Form I-765) is planned, but will not be available until U.S. Citizenship and Immigration Services formally announces the specific start dates. Expedited processing for the work authorization documents will be especially welcome, given the current lengthy processing times for employment authorization documents, almost never less than ninety days.

*Nancy-Jo Merritt focuses her practice in immigration law and has nearly three decades of experience representing domestic and international companies with issues concerning foreign national employees and business immigration matters. She provides strategic counseling to clients and assists employers in developing compliance programs. She earned her B.A., (1964) M.A., (1974) J.D., (1978) from Arizona State University.*



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