

# Issues & Answers

## IMMIGRATION ALERT

### *H-1B "Cap" is Reached*

*By Nancy-Jo Merritt*

The U.S. Citizenship and Immigration Services ("USCIS") announced on February 17th that it will no longer accept first-time applications for H-1B work authorization. The congressionally mandated fiscal year 2004 "cap" of 65,000 first-time petitions has been reached, just five months into this fiscal year.

USCIS has implemented the following procedures for the remainder of FY 2004:

- USCIS will process all petitions filed for first-time H-1B employment received by the end of business on February 17, 2004.
- USCIS will return all cap-subject petitions received after the end of business on February 17, 2004.
- Returned petitions will be accompanied by the filing fee.
- Petitioners may re-submit petitions when H-1B "cap" numbers are available in FY 2005.
- The earliest date a petitioner may file a "cap" petition requesting FY 2005 H-1B employment with an employment start date of October 1, 2004, will be April 1, 2004.

Remember, petitions for current H-1B workers do not count towards the cap. Accordingly, USCIS will continue to process petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States.
- Change the terms of employment for current H-1B workers.
- Allow current H-1B workers to change employers.
- Allow current H-1B workers to work concurrently in a second H-1B position.

Of course, petitions for first-time H-1B employment will not be subject to the annual cap if the foreign national will be employed at an institution of higher education or an affiliated nonprofit entity, at a nonprofit research organization, or a governmental research organization.

We are available to determine if alternate options are available to obtain temporary work authorization for employees whose petitions are subject to the cap. We can also assist with issues of maintenance of status for individuals who must wait out a period of non-employment until the end of this fiscal year.

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