

Immigration News Update

February 18, 2004

- H-1B Cap has been reached for Fiscal Year 2004. U.S. CIS announced yesterday that the H-1B cap for 2004 has been reached. Please see the below press release. If you need legal advice about the consequences of this development on an immigration matter, please do not hesitate to contact the Miller Canfield Immigration Team.

Washington, D.C.-- U.S. Citizenship and Immigration Services (USCIS) announced today that it has received enough H-1B petitions to meet this year's congressionally mandated cap of 65,000 new workers. After today, USCIS will not accept any new H-1B petitions for first-time employment subject to the FY 2004 annual cap.

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

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

Petitions for current H-1B workers do not count towards the congressionally mandated H-1B 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

USCIS also notes that petitions for new H-1B employment are not subject to the annual cap if the alien will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization. USCIS will also continue to process H-1B petitions for workers from Singapore and Chile consistent with Public Laws 108-77 and 108-78.

On March 1, 2003, U.S. Citizenship and Immigration Services became one of three legacy INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing our nation's security.

For more information about this, or other U.S. immigration issues, please contact our Miller Canfield Immigration Practice.