



IMMIGRATION ALERT!

Relief for H-1B Workers with Stalled Labor Certifications

President Bush signed into law on November 2, 2002 a rule that makes it easier for an H-1B worker to obtain annual extensions of H status beyond the six-year limit that would otherwise apply. Prior to the new law, an H-1B worker could get a seventh-year extension only if a labor certification application (generally the first step in the green card process) had been approved, the Form I-140 preference petition had been filed, and more than one year had passed since the filing of the labor certification (or since the filing of the Form I-140 preference petition, if no labor certification was required). Under the new rule, H-1B workers can get annual extensions of H status beyond the sixth year even if the labor certification application remains pending, so long as it had been filed for at least one year. Because of severe processing backlogs at most state Departments of Labor, many H-1B workers were unable to get an extension under the prior rule because their labor certification applications remained unapproved and they thus could not file the Form I-140 preference petition. Under the new law, such H-1B workers are eligible for annual extensions beyond the sixth year so long as the labor certification application has been pending for at least one year. Annual extensions of H-1B status beyond the six-year limit are available until the green card case has been adjudicated. This new rule applies even if the H-1B worker had since changed nonimmigrant visa status or departed from the United States. The new rule is contained in the "Twenty-First Century Department of Justice Appropriations Authorization Act" (H.R. 2215), and expands Section 106(a) of the "American Competitiveness in the Twenty-First Century Act of 2000" [Pub. L. No. 106-313).

Seyfarth Shaw's Business Immigration Group provides periodic Immigration Alerts about noteworthy developments in the business immigration field. The information that we provide is of a general nature and should not be interpreted as legal advice applicable to a specific factual situation. If you have questions about the information contained in this Immigration Alert or would like to know more about Seyfarth Shaw's Business Immigration Group and our inbound and outbound visa processing capabilities, please contact either of our co-chairs; Jim King in Atlanta at jking@seyfarth.com or Russell Swapp in Boston at rswapp@seyfarth.com. If you would like to receive notice about future Immigration Alerts, please go to the navigation bar and click "Subscribe" under the Immigration Updates section.
