



## **IMMIGRATION ALERT**

### **Congress Passes H-1B and L-1 Visa Reform Bill**

Last week Congress passed the Omnibus Appropriations bill (H.R. 4818) containing significant changes to the L-1 and H-1B work permit programs. The bill is expected to be signed into law by President Bush before December 3, 2004 (the date on which current funding for the government expires). Following are highlights of Title IV of the bill, the “L-1 Visa and H-1B Visa Reform Act”:



### **Changes to the L-1 Program**

#### **Limited Client Site Work by L-1B Workers**

An employee in the L-1B specialized knowledge work permit category will no longer be allowed to work primarily at a third party worksite, unless the L-1B worker remains controlled and supervised by the L-1B petitioning employer. Even in that event, the L-1B worker cannot work at a third party worksite if the arrangement is essentially one to provide labor for hire as may be done under the H-1B rules. Rather, placing the L-1B worker at a third party work site will now require a showing that such placement is in connection with a product or service for which “specialized knowledge” specific to the initiating L-1B employer is required.

This restriction on the placement of L-1B “specialized knowledge” workers becomes effective 180 days after President Bush signs the bill and applies to all L-1B filings, including extensions filed for L-1B workers already in the United States.

#### **Qualifying Employment for L-1 Blanket Eligibility Increased to One Year**

L-1A managerial workers and L-1B “specialized knowledge” workers have been eligible for classification under the L Blanket program if they could establish that they worked for a period of at least six (6) months with a foreign affiliate of the L-1 petitioning employer. Effective 180 days after President Bush signs the bill, the period of qualifying foreign employment increases to one (1) year (bringing it back in line with the period of qualifying employment currently required for non-blanket L petitions).

However, the requirement of one (1) year of qualifying foreign employment will not apply to L-1 extensions for workers whose L visa applications were approved before the one-year requirement becomes effective.

## **Changes to the H-1B Program**

### *H-1B Dependency Rules Resurrected*

Employers with a certain number or percentage workforce of H-1B workers or which have committed a willful failure or misrepresentation in the Labor Condition Attestation (“LCA”) process are once again subject to special rules (including a non-displacement attestation). These so-called H-1B dependency rules, which had expired on October 1, 2003, will now be made permanent effective 90 days after President Bush signs the bill.

### *H-1B Exemption from Annual Cap Available for U.S. Master’s Degree Holders and Higher*

On an annual basis, an additional 20,000 H-1B work permits will be available for persons who hold a Master’s degree or higher awarded by a United States college or university. This allotment of H-1B work permits is in addition to the 65,000 H-1B work permits that are available each fiscal year. The 2005 fiscal year cap was reached as of the first day of the current fiscal year -- October 1, 2004 – and the advanced degree exemption thus provides some measure of relief.



The additional H-1B allotment for advanced degree holders becomes effective 90 days after President Bush signs the bill.

### *H-1B Prevailing Wage Must Be Paid at One Hundred Percent*

The bill requires H-1B employers to pay 100% of the prevailing wage (as opposed to the current rule permitting employers to pay as low as 95% of the prevailing wage). The bill also requires the Department of Labor (“DOL”) to provide wage surveys that include a minimum of four (4) experience levels (in contrast to the current DOL surveys which include only two (2) experience levels and often result in inappropriately high wages for intermediate-level H-1B workers). This provision is effective 90 days after President Bush signs the bill.

### *H-1B Training Fee Reinstated and Increased*

The bill reinstates the per-applicant education/training fee that had expired in October 2003 and increases it from \$1,000 to \$1,500 for employers with more than 25 employees. Employers with 25 or fewer employees must pay \$750. The education/training fee applies to all H-1B filings other than a second petition extension request filed by the same employer or a request for a petition amendment with no extension of stay request.



The increased education/training fee goes into effect immediately as of the date President Bush signs the bill.

## Changes Affecting Both H-1B and L-1 Visas

### Fraud Prevention Fee for H-1B and L-1 Workers

The bill imposes a \$500 fraud prevention fee on the initial employer filing of an H petition, an L petition, or an L blanket application. The fraud prevention fee does not apply to petition extensions or renewals but does apply to filings by a new employer (i.e. in the change of employer context).

It appears that the \$500 fraud fee will apply to filings made 90 days after the date of enactment, but that effective date is not entirely clear at this point.

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