



IMMIGRATION ALERT

H-1B Cap for Fiscal Year 2005 Reached

U.S. Citizenship and Immigration Services (“USCIS”) announced on Friday, October 1, 2004 that it had as of that date received a sufficient number of H-1B petitions to meet the annual limit for fiscal year 2005 (ending September 30, 2005). Any H-1B petition received by USCIS after 8:00PM on Friday, October 1, 2004 will be returned (with filing fee intact). Requests received prior to that cutoff date will be processed.

In determining that the cap had been met, USCIS has taken into account the unused numbers from fiscal year 2004 that had been set aside under Free Trade Agreements with Chile and Singapore and has also considered the H-1B petitions that are not subject to the annual limitation.



With some exceptions, petitions for current H-1B workers are not subject to the annual cap. Non-cap cases would include H-1B workers extending their status, changing from one H-1B employer to another, changing the terms of existing H-1B employment, or filing for a second (concurrent) H-1B position. In addition, foreign nationals seeking to work for an institution of higher education, for a related or affiliated nonprofit entity, or for a nonprofit research organization or a government research organization are not subject to the H-1B cap.

There is expectation that the U.S. Congress will during its lame duck session in November 2004 provide some H-1B cap relief (likely limited to those with post-graduate degrees). It is likely that, in exchange for any such H-1B cap relief, Congress will impose restrictions on the L-1 intracompany transferee work permit category.

Unless and until there is legislative relief on the H-1B numbers, the earliest date on which an employer may file an H-1B cap-subject petition is April 1, 2005, and the employment start date in that case would be October 1, 2005 at the earliest.

For additional information on the H-1B cap, visit www.immstar.com, click “Immigration Updates,” and choose “Immigration News,” then view “Managing the H-1B Cap.”

Seyfarth Shaw's Business Immigration Group provides periodic information 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 visit our website, www.immstar.com, or contact one of the Business Immigration Group Partners: Jim King (jking@sefarth.com) in Atlanta; Russell Swapp (rswapp@sefarth.com) or Dyann DelVecchio (ddelvecchio@sefarth.com) in Boston; Ric Fischer (Rfischer@sefarth.com) in Chicago; or Cris Weals (cweals@sefarth.com) in DC. If you would like to receive our Immigration Alerts, please contact Sarah Compton via e-mail at scompton@sefarth.com. Thank you.



Seyfarth Shaw LLP
55 East Monroe Street
Suite 4200
Chicago, IL 60603
ATTN: Client Relations
Seyfarth@sefarth.com