



## **IMMIGRATION ALERT**

### **USCIS ANNOUNCES IMMINENT RELEASE OF 20,000 H-1Bs**

USCIS has issued an advance copy of its rule to finally release the additional 20,000 H-1B visa allotments for Fiscal Year 2005. These additional H-1B visas were initially announced on December 8, 2004 under the H-1B Visa Reform Act. The rule clarifies that the new visa allotments **will be made available only to foreign nationals who hold an advanced degree (Master's Degree or higher) awarded by a United States college or university.** The new visas will become available five (5) days after an implementation date to be announced by USCIS; it is believed that this implementation date will be announced today or tomorrow. Additionally, the rule allows for a previously approved or currently pending advanced degree H-1B petition which requested a Fiscal Year 2006 start date (October 1, 2005) to be converted to a Fiscal Year 2005 start date (September 30, 2005 or earlier).



The advanced degree H-1Bs will be accepted for filing only with the USCIS Service Center in Vermont, no earlier than the fifth day following publication of the rule in the Federal Register. USCIS will allow a two day filing window for all new petitions and conversion requests. All new petitions and conversion requests will be treated uniformly if filed within the two day window. Therefore, there will be no preference given to advanced degree cases that have already been filed with USCIS. USCIS anticipates that the 20,000 H-1B allotments will be exhausted within the two day window. In this case, USCIS will randomly select 20,000 petitions to be awarded a Fiscal Year 2005 start date (pre-October 1). Petitions which are not selected for a Fiscal Year 2005 start date will be automatically adjudicated for a Fiscal Year 2006 start date (October 1, 2005).

The new allotment of H-1B visas is in addition to the 65,000 H-1B visas that are currently available each fiscal year, increasing the total to 85,000 H-1B work permits on an annual basis.

The 2005 fiscal year cap of 65,000 H-1B visas was reached on the first day of the current fiscal year -- October 1, 2004. The advanced degree exemption, enacted by Congress in December 2004 through the Consolidated Appropriations Act of 2005, was intended to provide some measure of relief to U.S. employers who depend on foreign national talent to satisfy staffing needs. The additional H-1B allotment for advanced degree holders was initially scheduled to take effect on March 8, 2005 but has been delayed due to USCIS's difficulty in appropriately interpreting Congress's intent in applying the exemption and in designing a fair system for allocation of the new benefit.

Please feel free to discuss any H-1B visa petition requests which would be affected by this new rule with your contact in the Business Immigration Group at Seyfarth Shaw LLP.

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Seyfarth Shaw LLP  
55 East Monroe Street  
Suite 4200  
Chicago, IL 60603  
ATTN: Client Relations  
[Seyfarthshaw@seyfarth.com](mailto:Seyfarthshaw@seyfarth.com)