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MasudaFunai

TOPIC OVERVIEW

USCIS Announces that H-1B Quota for FY 2011 Is Not Met During Initial Filing Period – USCIS Receives Significantly Lower Number of H-1B Quota Petitions than Last Year.....1

DOL Commences Backlog Reduction Program in PERM Process.....2

DOL Releases Supplemental Guidance About New Prevailing Wage Determination Process.....2-3

USCIS Adds Additional Form to Its Direct Filing System 3

DOS Releases April 2010 Visa Bulletin – Most Employment-Based Immigrant Visa Categories Continue to Advance..... 3-4

DHS Unveils New Initiatives to Enhance the E-Verify System 4-5

DHS Designates Greece as a New Member of the Visa Waiver Program..... 5

ICE Begins New Round of I-9 Audits..... 5

DOL Seeks Nearly \$1.9 Million from Computer Consulting Company for H-1B LCA Violations..... 5

USCIS Announces That H-1B Quota for FY 2011 Is Not Met During Initial Filing Period – USCIS Receives Significantly Lower Number of H-1B Quota Petitions Than Last Year

The U.S. Citizenship and Immigration Services (USCIS) recently announced that the H-1B quota for fiscal year 2011 (October 1, 2010 to September 30, 2011) was not met during the initial filing period of April 1, 2010 to April 7, 2010. The USCIS stated that it received approximately 19,100 H-1B quota subject petitions during the initial filing period. The H-1B quota for fiscal year 2011 is 65,000. Of the 19,100 petitions received, approximately 5,600 requested the U.S. Master’s or higher degree exemption from the overall quota. This exemption for fiscal year 2011 is limited to 20,000. Therefore, the USCIS indicated that the H-1B quota for fiscal year 2011 remains open and the USCIS will continue to accept H-1B quota subject petitions until all of the available numbers are used.

The USCIS indicated that all petitions filed during the initial filing period will be issued receipt notices with the filing date of April 7, 2010. Additionally, for those petitions filed requesting premium processing, the 15 day premium processing clock for the initial review began on April 7, 2010, regardless of the date on which the petition was received during the initial filing period.

During fiscal year 2010 (October 1, 2009 to September 30, 2010), the H-1B quota was not reached until December 21, 2009. The H-1B quota was met during the initial filing periods in fiscal years 2008 and 2009. It is assumed that the H-1B quotas in fiscal year 2010 and 2011 were not met during the initial filing periods due to the economy and also the USCIS’ aggressive review of petitions filed through the H-1B program. However, in fiscal year 2011, there was an approximately 20% decrease in the H-1B quota subject petitions filed in comparison to fiscal year 2010. Although there was this significant decrease in initial filings, it is assumed that the quota may be met earlier in fiscal year 2011 than in fiscal year 2010 due to the improving economy in the United States.



determinations. It also clarified the prevailing wage determinations that will be issued for high paying occupations that may exceed the OES standards.

Additional information about the DOL's implementation of its new prevailing wage system will be contained in our firm's future Immigration Updates when it becomes available.

USCIS Adds Additional Form to Its Direct Filing System

The USCIS continues to add forms that must be filed with the USCIS' new lockbox facilities. The most recent form added to the lockbox direct filing system is the Form I-131 Reentry Permit and Advance Parole Application. The other forms that currently must be filed through the direct filing system include the Form I-765, Form I-102, Form I-94, Form I-824, certain Form I-485 and Form N-400. Due to the number of Forms that have been recently added to the direct filing system, the USCIS has been delayed in issuing receipt notices. Additionally, the USCIS previously indicated that Applicants could receive an email from the USCIS confirming receipt of applications. However, although these emails are being issued, they are significantly delayed after the date of filing and do not continue any case information. It is assumed that these delays will continue as the USCIS continues to add further forms to the direct filing system. Ultimately, the USCIS indicated that within the next few months, all Forms will be filed through the direct filing system.

Additional information about the continued expansion of the direct filing system will be contained in our firm's future Immigration Updates when it becomes available.

DOS Releases April 2010 Visa Bulletin – Most Employment-Based Immigrant Visa Categories Continue to Advance

The U.S. Department of State's (DOS) recently released its April 2010 Visa Bulletin. Similar to last month's Visa Bulletin, most employment-based preference categories advanced this month. Prior to last month's Visa Bulletin, there was very little (if any) advancement in the employment-based preference categories for many months. The most significant advances in this month's Visa Bulletin are in the EB-3 World category and the EB-3 Indian national category which advanced 3 months and 2 months, respectively. As the end of the fiscal year continues to approach on September 30, 2010, it is assumed that the employment-based immigrant visa categories will continue to advance to ensure that all of the employment-based immigrant visa numbers available in fiscal year 2010 are used.

The following is a comparison of the movement (or lack of movement) in the employment-based immigrant visa categories since the beginning of retrogression in October 2005.



	Oct 2005	Dec 2007	Jun 2008	Jan 2010	Feb 2010	Mar 2010	Apr 2010
EB-3 World	03/01/01	09/01/02	03/01/06	08/01/02	09/22/02	12/15/02	02/01/03
EB-2 China	05/01/00	01/01/03	04/01/04	05/01/05	05/22/05	07/08/05	08/22/05
EB-3 China	05/01/00	10/15/01	03/22/03	08/01/02	09/22/02	12/15/02	02/01/03
EB-2 India	11/01/99	01/01/02	04/01/04	01/22/05	01/22/05	02/01/05	02/01/05
EB-3 India	01/01/98	05/01/01	11/01/01	06/22/01	06/22/01	07/01/01	09/08/01
EB-3 Other Workers	10/01/00	10/01/01	01/01/03	06/01/01	06/01/01	06/01/01	06/01/01

Additional information about the employment-based immigrant visa categories will be contained in our firm's future Immigration Updates when it becomes available.

DHS Unveils New Initiatives to Enhance the E-Verify System

The U.S. Department of Homeland Security (DHS) recently announced new initiatives to “strengthen the efficiency and accuracy” of the E-Verify system. Currently, there are approximately 189,000 employers using the E-Verify system. DHS hopes that with the further enhancements in the E-Verify system, more employers will be inclined to use this optional system. However, because the system requires employers to complete an additional step in the employment eligibility verification process which is not mandatory, many employers are not willing to use this optional system.

The new initiatives announced by DHS include a new agreement with the U.S. Department of Justice (DOJ) that will streamline the adjudication process in cases of E-Verify misuse and discrimination; the establishment of an informational telephone hotline for employees seeking additional information about E-Verify; and training videos focusing on E-Verify procedures and policies, employees rights and employers responsibilities in English and Spanish.

Additionally, a USCIS E-Verify helpline will now provide employers and employees with assistance in completing the Form I-9 Employment Eligibility Verification form. The helpline will also assist employees to file complaints about possible discrimination in the E-Verify process. The USCIS helpline telephone number is (888) 897-7781. However, this helpline telephone number will not become available until at least April 5, 2010. It is currently unknown as to the level of assistance that the contractors who will be answering the calls through this helpline will be able to provide employers and employees due to the intricacies of the Form I-9 process. It is assumed that for more complicated questions, the contractors may suggest that employers and employees continue to consult with legal counsel in order to minimize potential liability in the Form I-9 process. The USCIS and Immigration and Customs Enforcement (ICE) have not indicated that they will create a “safe harbor exception” in an ICE Form I-9 enforcement action. Any information (whether accurate or inaccurate) provided by the contractors through the helpline which is relied upon by employers. Therefore, ICE could potentially use inaccurate information provided



For more information about this or any other immigration law topic, please contact Bob White, at 847.734.8811 or via email at rwhite@masudafunai.com.

Weekly Immigration Updates are provided under the Legal Update link of the Immigration Group Section of our firm's website at www.masudafunai.com.

About the Immigration Group

The Immigration Group of Masuda Funai provides immigration representations to publicly traded companies, privately held corporations, educational institutions, not-for-profit organizations and individuals in business immigration matters. As one of the larger immigration groups in the United States, we annually file more than 2,500 petitions on behalf of approximately 275 different corporate employers from such diverse industries as automotive-related, computer consulting, machine tool manufacturing, electronics, construction and equipment, banking and financial, health care and high tech.

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About Masuda Funai

Masuda Funai is a full-service law firm representing international and domestic companies operating and investing in the United States. Our 45 attorneys located in Chicago, Schaumburg and Los Angeles counsel clients in every aspect of business, including establishing, acquiring, and financing operations; ownership, development and leasing of real estate; transfer of overseas employees to the U.S.; employment, labor, and benefits counseling and dispute resolution; intellectual property, copyright and trademark; business litigation; creditors' rights and business risk management; structuring the distribution and sale of products and services throughout the U.S.; and estate planning and administration.

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