

IMMIGRATION NEWS

March 16th 2009

STUDENTS ON OPT—BEWARE OF “EMPLOYERS” WILLING TO FILE A FRAUDULENT H-1B PETITION FOR YOU

With the implementation of the “cap-gap fix” last spring we’ve seen even more H-1B scam artists and “agencies” wreck students’ immigration and career plans by filing fraudulent or irresponsible H-1B petitions for them. If a company does not really plan to employ you, and/or you do not plan to work for them, do not allow that company to file an H-1B petition for you. At worst an employer who files a petition knowing that it will never employ you has committed fraud and perhaps involved you in the fraud. “Agencies” who file petitions for you hoping that they might eventually find work for you but knowing that they will “bench” you (place you in an “unproductive status”—which is prohibited by law) until then also violate the law and jeopardize your status. Some students on OPT seem to have fallen into the trap of allowing such petitions to be filed for them while they search for the job they really want. Don’t make this mistake. It is a serious one.

ALL (REALLY ALL) CAP-EXEMPT PETITIONS TO BE FILED AT CSC

The January 30, 2008 USCIS announcement that quota-exempt H-1B petitions must be filed at USCIS’ California Service Center carried a footnote indicating that the new policy did not necessarily apply to extensions, and that quota-exempt employers could continue to file extension petitions based on jurisdiction.

At the VSC liaison meeting on March 2, 2009, AILA was advised that the practice of accepting H-1B extensions of status based on 8 CFR 214.2(h)(8)(A) - petitioners who are exempt - was only to assist in the transition and would shortly be terminated. AILA has since learned that **effective immediately, all cap-exempt employer cases, including extensions, should be filed at CSC**. Petitions mistakenly filed with the VSC will be rejected. The instructions to the I-129 have been amended.

Cap exempt petitions include those filed by an institution of higher education, an affiliated nonprofit, a government research organization or a nonprofit research organization. Petitions filed on behalf of persons working concurrently at cap exempt and cap subject employers are also exempt, as well as those on behalf of certain persons working “at” rather than “for” a cap exempt employer.

February 17th 2009

DON’T DELAY--H-1B FILING SEASON OPENS SOON

For several years U. S. employers have been suffering an extreme shortage of H-1B visas for temporary workers whose positions require at minimum a Bachelor’s degree. Last year the

65,000 H-1B quota or “cap” available for employees with a bachelor’s degree [or higher degree not earned in the US] was exhausted immediately. The additional 20,000 H-1B quota for employees with a U.S. master’s degree or higher was also exhausted within a few days. The only good piece of news we have with regard to this year is that it appears that demand for H1B numbers may be depressed because of the economic crisis, thus increasing the chance of selection for remaining applicants.

In order to maximize your chances of obtaining one of the coveted H-1B numbers, you must begin planning now and submit petitions as early as possible. It can take several weeks to gather the necessary information, documents, and other items necessary to prepare and file the petition.

We are asking our clients and potential clients to have all necessary documents, checks, and other items to us by March, 2009, at the very latest, in order to ensure that we can file their petitions on April 1, 2009, as our office is extremely busy with such cases at this time of year.

Remember, higher education institutions and certain affiliated nonprofit entities (including many K 12 school systems and state agencies), as well as government and nonprofit research organizations, are exempt from the H1B quotas. J-1 physicians who have been granted a waiver of the two year residence requirement in exchange for working in an underserved area, in most cases are exempt as well. Also, persons who have already been counted against the H-1B quota during the past six years are exempt, including most persons extending H status and changing from one H1B employer to another. Finally, certain persons working at institutions of higher education or teaching hospitals for private employers also are exempt from the quota.

If you have questions about any aspect of this process, please contact our office right away.

U.S. DEPARTMENT OF DEFENSE ANNOUNCES PILOT PROGRAM TO ENLIST CERTAIN NONIMMIGRANTS

The Secretary of Defense has authorized the military services to recruit certain legal aliens whose skills are considered to be vital to the national interest, including physicians, nurses, and persons with expertise in certain languages and cultures. During a twelve-month pilot program up to 1000 people will be recruited. The program will be open to those who are asylees and refugees and to those who hold Temporary Protected Status or any of the following nonimmigrant classifications: E, F, H, I, J, K, L, M, O, P, Q, R, S, T, TC, TD, TN, U, or V. In order to be eligible, an applicant must have been in valid status in one (or more) of these classifications for at least two years before enlisting and must not have been absent from the U.S. more than 90 days during the last two years. Of particular interest to the DOD are persons with essential skills, such as physicians and nurses, and persons who speak certain languages, such as Hindi, Chinese, Arabic, Russian, Pashtun, and many others (not Spanish, however!). For more information, see the press release at <http://www.defenselink.mil/releases/release.aspx?releaseid=12384> and the fact sheet at <http://www.defenselink.mil/news/mavni-fact-sheet.pdf>.