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H-1B Season – The Time Is Now

by Becki L. Young

Every January the immigration world marks the beginning of what is known as “H-1B season” – the frenzied period during which US employers, foreign professionals, and their immigration lawyers prepare and submit tens of thousands of petitions for H-1B visas to the US

Immigration Service.

The rush is caused by an April 1 deadline, by which all H-1B petitions for the upcoming fiscal year must be submitted. At least, this has been the case in the past few years – but it has not always been so. Demand for H-1B visas is largely impacted by the U.S. econo-



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my – and it is instructive to see how economic ups and downs have affected the demand for H-1B numbers in recent years.

For many years the availability of H-1B numbers exceeded the demand by employers. In 1997 (the start of the dot com boom)

the H-1B cap was met for the first time, a few weeks before the end of the fiscal year. The following year the cap was met again, this time four months early. In the two subsequent years (FY99 and FY00) Congress increased the cap to 115,000, but the cap was still met several months before the end of each fiscal year, due to the vigorous demand for high-tech workers.

Unfortunately political will sometimes lags behind economic reality. The cap was increased to 195,000 in FY01-03, but by then the dot com boom had gone bust, and there were excess H-1B numbers in all three years.

In FY04 the cap was lowered again to 65,000; since that time demand for H-1B visas has increased annually while the available numbers have remained static. In FY04 the cap was met seven months before the close of the fiscal year, and in FY05 it was met on the first day of the fiscal year. At the time it seemed shocking that the cap could be met at such an early date, but since then the situation has continued to grow even more difficult, with numbers being exhausted prior to the start of each fiscal year since FY2006.

For the past two years H-1B numbers have been exhausted on the first day they were available (April 1 preceding the start of the fiscal year); once the cap was reached, the process shut down for another 18 months, preventing many

companies from hiring vitally needed workers. Furthermore, in each year USCIS received twice as many petitions as there were numbers available, meaning that even employers who filed on the first day had only a 50 percent chance of having their petition accepted. According to the Bureau of Labor Statistics, since the start of the current recession in December 2007, the number of unemployed persons has grown by 3.6 million, and the unemployment rate has risen by 2.3 percentage points (to its current level of 7.2 percent). Despite the increased availability of US workers, it is safe to assume that some employers will still file H-1B petitions this year, since there is still some degree of mismatch between the skills available among U.S. workers and the needs of U.S. employers. Those employers who plan to proceed with H-1B petitions for FY2009 are advised to begin the process as soon as possible, to meet the April 1 deadline.



Becki L. Young has been working in the field of immigration law since 1995. Ms. Young's practice focuses on employment-based immigration law. She has represented employers in a variety of industries, including investment banking and securities, information technology, health care, and hospitality, providing advice on work permits and related immigration issues. Contact her to learn more or to schedule a personal consultation by calling 202-232-0983 or e-mailing becki.young@blylaw.com.

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