



IMMIGRATION ALERT

The Immigration Practice of Sidley Austin Brown & Wood LLP

Our Immigration Practice develops a comprehensive and cost effective strategy to address the unique immigration needs of each client. The legal services we offer include assistance in obtaining temporary visas, permanent residence and U.S. citizenship. We also provide employees with immigration advice related to mergers and acquisitions, corporate law, international tax, I-9 compliance and other labor issues affecting the employment of foreign nationals. We routinely represent clients before Citizenship and Immigration Services (formerly Immigration and Naturalization Service), Department of Labor, Department of State and U.S. consular posts worldwide.

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H-1B Cap Cutoff Believed To Be Imminent

We have received information from the American Immigration Lawyers Association (AILA) that the U.S. Citizenship and Immigration Services (CIS, formerly INS) will shortly publish a notice cutting off filing of H-1Bs subject to the numerical cap for this fiscal year.

How does the imminent H-1B cap announcement affect cases that have not yet been filed?

At this point, it appears that little time remains to file new H-1B cases, and that CIS will stop accepting new H-1B filings in the near future. New H-1B cap cases should be filed with the understanding that there is a small likelihood of approval under the 2004 cap.

How does the immigrant H-1B cap announcement affect cases that have already been filed and are pending with CIS?

It appears that CIS is attempting to cut off H-1B filings at the point when the number of approved cases plus the number of pending cases reaches the H-1B limit of 65,000. Therefore, it is likely that cases already pending with CIS will be approved, but at this point this is an open question.

Which types of cases are affected by the H-1B cap?

Not all filings are subject to the H-1B cap. For example, petitions requesting extension of H-1B status or filings for a change of H-1B employer are not subject to the cap. Also, H-1B petitions filed by institutions of higher learning and government and nonprofit research institutions are exempt from the cap and will be processed as usual.

What are the options when the H-1B cap is reached?

Please contact one of the attorneys in the Sidley Austin Brown & Wood LLP immigration practice group to discuss a strategy regarding any of your employees who may be affected by the cap.

We will send additional information as it develops. Please visit <http://www.sidley.com/news/publist.asp?PubType=23&PubType2=&view=all> for more detailed information regarding the background and effect of the H-1B cap on your employees.

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