



USCIS Announces H-1B Cap Has Been Reached

On November 23, 2011, Citizenship and Immigration Services (USCIS), announced that as of November 22, the agency had received sufficient H-1B petitions to reach the annual cap for FY2012. Therefore, USCIS will not accept for processing any cases that it received after November 22. The November 22 cut-off means that companies will not be able to file petitions for new H-1B petitions again until April 1, 2012 for positions with October 1, 2012 start dates. Please contact us to discuss any employees or candidates affected by the exhaustion of the H-1B cap.

Please click [here](#) to view the USCIS announcement that it has reached the FY2012 cap.

House of Representatives Committee Passes Mandatory E-Verify Bill

In September, the House Judiciary Committee passed a bill that would require USCIS to develop a new Employment Eligibility Verification System (EEVS), “patterned” on the current E-Verify system, and would require all employers to use the system to verify the documents of employees at the time of hire. The Legal Workforce Act of 2011 (H.R. 2885), introduced by Chairman Lamar Smith (R-TX), would establish a staged implementation process for the mandate over a two-year period based on size of the employer. Employers would be required to verify all new hires through the EEVS system and to reverify certain categories of existing employees. The bill would sharply reduce the number of documents that employers can accept as proof of an employee’s identity and work authorization. The bill would make it a felony for workers or employers to knowingly misuse a social security number and generally increase penalties for employers who do not comply with the employer verification laws. The bill also includes a preemption provision that would bar states and municipalities from enacting laws and ordinances relating to employment eligibility and verification.

At this time, H.R. 2885 has only been passed by the Senate Judiciary Committee but has not yet been considered by the full House of Representatives or the Senate. While there is general support in Congress for stronger immigration enforcement, to date HR 2885 has proven to be controversial among many Democrats and Republicans due to its increased burdens on employers, disproportionate impact on the agricultural sector and preemption provisions limiting states’ rights. Please click [here](#) for a full text of H.R. 2885 and [here](#) for Chairman Smith’s Statement regarding the Legal Workforce Act of 2011.

House Prepares to Vote on Elimination of Employment-Based Immigration Per-Country Limits

Today, the full House of Representatives is slated to vote on HR 3012, The Fairness for High Skilled Immigrants Act, which would eliminate the per-country numerical limitation for employment-based permanent residence applications. The law provides an annual limit of 140,000 employment-based immigrant numbers within five employment categories, or “preferences.” Within the 140,000 available numbers, about 40,000 visa numbers are allocated to each of the two employment preferences most frequently used by employers for sponsoring foreign professionals, EB-2 (positions requiring advanced degrees) and EB-3 (professional positions requiring at least a bachelor’s degree and skilled workers). If demand for a preference category exceeds the available numbers in a fiscal year, the category becomes oversubscribed, or “backlogged.” Also, under current law, employees born in any country may only be granted a maximum of 7% of the numbers within a preference category. The second preference, EB-2, is not currently backlogged but is “current.” However, due to the per-country limits, the EB-2 visa numbers are backlogged for applicants born in India and China, resulting in delays of over three years. The EB-3 classification is backlogged for all applicants, with resulting delays of five years or more in permanent residence processing. In EB-3, due to the per-country limitations, applicants born in India and China face additional delays for a total of seven years or more. (Please see the next item for more information on the current state of the visa number backlogs.)

If enacted, HR 3012 would eliminate the per-country limits in the employment-based preference classifications. The bill would not increase the total number of available visas, but would eliminate the longer delays that Indian and Chinese nationals experience under the current system. While the proposed equalization of waiting times is sure to be welcome news to currently backlogged Indian and Chinese applicants, those gains will likely be offset by increased delays for applicants not from India or China.

If HR 3012 is passed by the House, the Senate will need to approve its companion bill, S. 1857. Please click [here](#) to view the text of HR 3012 and [here](#) to view the sponsor’s statement about the bill.

DOS Announces Advances in Employment-Based Visa Numbers

The Department of State (DOS) December 2011 Visa Bulletin shows forward movement in priority dates for EB-2 India and EB-2 China, as well as EB-3 for all countries. EB-1 for all countries and EB-2 for all countries other than India and China will remain current. The cut-off date for EB-2 India and China advanced four months to March 15, 2008, which approaches the most favorable priority date previously reached for applicants from China and India under the July 2007 Visa Bulletin when all employment-based categories for all countries were current.

In the subsequent months, priority dates are expected to remain current for EB-1 for all countries and EB-2 for all countries other than India and China, and to advance steadily for EB-3 for all countries. For EB-2 India and EB-2 China, the rapid forward movement is expected to generate demand for immigrant visa numbers. Once the level of demand increases to meet the number of immigrant visa numbers allotted, it may be necessary for the DOS to slow or stop the movement by retrogressing the priority dates at some point during FY13. The priority date cut-offs reflected in the December 2011 Visa Bulletin and predicted for subsequent months are consistent with statements made by Charles Oppenheim, Chief of Immigrant Visa Control and Reports, at a meeting attended by Sidley Austin attorneys.

Please click [here](#) to view the Visa Bulletin for December 2011.

DOL ALJ Finds Employer Liable for H-1B Wages for Failure to Pay Worker's Return Transportation

The Department of Labor (DOL) Office of Administrative Law Judges (ALJ) recently issued a decision finding that an employer was required to pay wages for an employee's entire H-1B period because the employer had not effectively terminated the employee under the H-1B regulations. The case, *Matter of Kevin Limanseto v. Ganze & Company* (OALJ Case No. 2011-LCA-00005), involves an employer who filed an H-1B petition on behalf of a worker but terminated the H-1B employment prior to the start date listed on the Labor Condition Application (LCA) and the H-1B petition. The H-1B worker returned to his home country at his own expense, and the employer subsequently sent USCIS a notice that it no longer employed the H-1B worker.

The ALJ stated that for a termination to be effective, the H-1B petitioner must provide (1) notice to the worker, (2) notice to USCIS requesting withdrawal of the H-1B, and (3) payment for the worker's transportation home. The ALJ found that although the employer had notified the worker and sent notice to USCIS, it had not paid the worker's transportation home, and therefore it had not satisfied the requirements for an effective termination. Because the H-1B employer had not effectively terminated the worker, the ALJ ordered the employer to pay the worker the wages for the full period of the H-1B approval and interest.

Based on this ruling, we advise that your company review its policies and processes for terminating H-1B employees to ensure that they meet the requirements for effective termination. Please contact one of Sidley's immigration attorneys to discuss termination protocols and other issues relating to H-1B and LCA compliance.

USCIS Announces December 2011 Deployment of Electronic Filing System

USCIS, as part of its Transformation initiative, has announced that it is developing a new account-based system to allow for the electronic filing and tracking of applications and petitions, including forms, supporting evidence, and e-payments. With the account-based system, users will be able to reuse previously-submitted data from their online accounts when submitting subsequent applications and petitions. The agency stated that the first release of the new web-based system will be in December 2011. The initial release will be available for stand-alone filings (applications that are not filed jointly with another application) of Form I-539, Application to Extend/Change Nonimmigrant Status, and would affect applicants seeking to extend, change, or reinstate nonimmigrant visa classifications in B, F, J, or M categories.

USCIS plans to add features and functions through scheduled releases that are targeted for deployment approximately every six months after the initial release. The electronic filing system is targeted to be made available for filings of Form I-765, Application for Employment Authorization, and Form I-131, Application for Travel Document, in 2012.

In connection with the Transformation initiative, USCIS has published the first in a series of regulations that would promote the transition to electronic filing of applications and petitions via the new electronic system. Effective November 28, 2011, the regulation eliminates obsolete provisions of the regulations and eliminates references to outdated USCIS forms and descriptions of paper-based filing procedures.

Please click [here](#) for more information regarding the new electronic filing system.

USCIS Begins Issuing Redesigned Employment Authorization Document

USCIS is now issuing redesigned Employment Authorization Documents (EAD) that incorporate technology and new features to enhance security and deter fraud. The new EAD card looks similar to the redesigned permanent resident card, which USCIS began issuing in May 2010.

The application process will remain the same for EADs. All previously issued EADs will remain valid until the expiration date printed on the card, and USCIS will issue the redesigned EAD cards as individuals apply for a renewal or replacement.

For more information on the redesigned EAD card, please click [here](#).

USCIS Implements Secure Mail Initiative for Delivery of Immigration Documents

USCIS has fully implemented the Secure Mail Initiative, which uses U.S. Postal Service (USPS) Priority Mail with Delivery Confirmation for the issuance of permanent resident cards and documents pertaining to travel and employment authorization. The Secure Mail Initiative also allows USCIS customers to track the status of their documents using USPS tracking information.

To obtain tracking information and confirm the address for delivery of documents, customers who receive notices of approval can contact USCIS's Customer Services Center at (800) 375-5283 and provide information from their receipt notice. After receiving the tracking number of their package, customers can track the delivery status at the USPS website (www.usps.com).

Please click [here](#) for more information regarding the Secure Mail Initiative.

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

The Immigration Practice of Sidley Austin 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 The Department of Homeland Security, Department of Labor, Department of State and U.S. consular posts worldwide.

To receive future copies of this and other Sidley updates via email, please sign up at www.sidley.com/subscribe.

BEIJING BRUSSELS CHICAGO DALLAS FRANKFURT GENEVA HONG KONG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SHANGHAI SINGAPORE SYDNEY TOKYO WASHINGTON, D.C.

www.sidley.com

Sidley Austin LLP, a Delaware limited liability partnership which operates at the firm's offices other than Chicago, London, Hong Kong, Singapore and Sydney, is affiliated with other partnerships, including Sidley Austin LLP, an Illinois limited liability partnership (Chicago); Sidley Austin LLP, a separate Delaware limited liability partnership (London); Sidley Austin LLP, a separate Delaware limited liability partnership (Singapore); Sidley Austin, a New York general partnership (Hong Kong); Sidley Austin, a Delaware general partnership of registered foreign lawyers restricted to practicing foreign law (Sydney); and Sidley Austin Nishikawa Foreign Law Joint Enterprise (Tokyo). The affiliated partnerships are referred to herein collectively as Sidley Austin, Sidley or the firm.

SIDLEY AUSTIN LLP
SIDLEY