

January 4, 2008

MEMORANDUM

To stay competitive in today's global economy, U.S. companies and employers often need to hire skilled international workers for professional positions. The H-1B "specialty occupation" visa is the most common type of work visa used by employers (ranging from a sole proprietorship to a large corporation) to hire foreign professional workers. Employers who are considering sponsoring H-1B visa petitions for foreign workers should be aware of some critical timing and availability issues facing them in early 2008. The H-1B visa category is in short supply and employers must be prepared to file such visa petitions before **April 1, 2008**. Elliott Greenleaf's Akanksha Kalra, Esquire has extensive experience in filing H-1B visa petitions and is prepared to advise you and your colleagues in this complicated, but crucial area.

H-1B QUOTA FOR FISCAL YEAR 2009

The H-1B nonimmigrant work visa category applies to foreign workers coming temporarily to the U.S. to perform services in a "**Specialty Occupation**" or as a fashion model of "distinguished merit and ability". H-1B visas are most commonly used by U.S. corporations and employers to hire highly skilled foreign workers for professional positions that require a minimum of a "four year college degree"¹ in the field of information technology, healthcare, education architecture, engineering, mathematics, physical sciences, business specialties, accounting and other areas.

The "H-1B Cap"² refers to the annual numerical limitation set by the U.S. Congress, under which only 65,000 H-1B visa numbers are available in each fiscal year³. Under the Omnibus Appropriations Bill, an additional 20,000 H-1B visas are available for beneficiaries who obtain a Master's degree or higher from a U.S. institution of higher education. In April 2007, USCIS received more than 150,000 H-1B petitions for Fiscal Year (FY) 2008 and the quota was exhausted on the very first day of filing. Since the

¹ To hire a foreign worker on an H-1B visa, the job must be a professional position that requires, at a minimum, a bachelor's degree in the field of specialization; or a combination of education and experience equivalent to a degree in a field related to the offered job.

² H-1B "Cap-Exempt" Petitions: Please note that petitions filed to extend or amend H-1B employment of foreign workers already in H-1B status; or petitions for foreign workers to be employed by institutions of higher education or related nonprofit entities, nonprofit research organizations, or governmental research entities are not subject to the H-1B cap.

³ Out of the 65,000 H-1B visa numbers, 6,800 are set aside for nationals of Chile and Singapore.

number of H-1B visa petitions received was more than double of the available numbers, USCIS had to hold a lottery to randomly select the H-1B visa petitions which were allocated a number from the FY 2008 quota. The “advanced degree” H-1B cap of 20,000 visas for FY 2008 was also reached in a matter of weeks.

IMPORTANT - Please read carefully!

Due to the limited availability of the much ‘sought-after’ H-1B visa numbers, it is anticipated that demand for FY 2009 H-1B quota will exceed last year’s filings and the cap will be reached early. An employer can file an H-1B petition on behalf of a foreign worker up to six months in advance of the actual start date of employment. October 1, 2008 marks the beginning of FY 2009; therefore, H-1B petitions for FY 2009 can be filed six months in advance, i.e. on **April 1, 2008** (with a start date of employment of October 1, 2008).

If you are considering filing an H-1B petition under the FY 2009 cap, we suggest that you begin the process now. Since the H-1B process has become more and more complex, timely filing of H-1B petitions is crucial. We are accepting and preparing H-1B cases now for filing all **H-1B cap-subject petitions for FY 2009**, so please contact our office at the earliest. These cases will be prepared in advance for filing on the first possible day of filing, i.e. **April 1, 2008**. These H-1B petitions will be filed with a start date of employment effective October 1, 2008.

We provide comprehensive legal services in all areas of business immigration to employers and assist with obtaining work visas (e.g. H-1B) and permanent residence (“green cards”) for foreign born professionals seeking employment in the field of information technology, education, healthcare, research, pharmaceuticals, manufacturing, engineering, architecture and other areas.

For more information about the H-1B process or other immigration queries, please contact:

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This memorandum aims to provide a general overview of issues pertaining to the H-1B cap and should not be relied upon as legal advice and this communication does not create an attorney-client relationship.