

IMMIGRATION UPDATE FOR APRIL 2004



by

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H-1B Update: The United States Citizenship and Immigration Services (USCIS) announced that, as of February 17, 2004, the H-1B cap of 65,000 has been reached for the current fiscal year. The current fiscal year runs from October 1, 2003 to September 30, 2004. That means that the USCIS will not accept or approve any new H-1B cases for new employment with a start date of earlier than October 1, 2004, unless the case is not subject to the 65,000 cap. Cases which are not subject to the H-1B cap include: change of H-1B employment from one H-1B employer to another H-1B employer, extension of H-1B status for an alien already working in H-1B status, certain H-1B cases where the employer is a non-profit educational institution. Since these types of cases are not included within the H-1B cap, the USCIS is still accepting these cases and will adjudicate them. Individuals considering H-1B employment should consult with an experienced immigration attorney to determine whether their case is subject to the H-1B cap. As of April 1, 2004, the USCIS will accept H-1B filings only if the employment start date is on or after October 1, 2004 (the first day of the next fiscal year for immigration purposes). Individuals will still be required to maintain their current status until the new start of their H-1B employment.

Employers and employees planning on utilizing the H-1B category for the next fiscal year (October 1, 2004 to September 30, 2005) should be prepared to act quickly. Since the USCIS will begin accepting H-1B cases as of April 1, 2004 for the next fiscal year, it is likely that the H-1B cap for next fiscal year will be reached by early 2005.

Processing Times Update: As of March 12, 2004, the Charlotte USCIS office was working on adjustment of status (green card) cases and naturalization cases filed in February 2003. Based on this report, the estimated time from filing to interview is approximately 11 months.

As of April 1, 2004, the North Carolina Employment Security Commission (the office where labor certification cases are filed) was working on regular processing (Non-RIR) cases filed in October 2001 and RIR (Reduction In Recruitment) cases filed in March 2004.

Labor Certification (PERM) Update: In recent weeks, we have received several questions regarding the status of the PERM program which is expected to overhaul the

current labor certification program. The PERM program has been discussed over the past couple of years but it is possible that it will be implemented this year. The Department of Labor sent the PERM program to a federal agency known as Office of Management and Budget (OMB) on February 23, 2004. If the OMB does not require changes to the PERM program, then the PERM program could take over sometime in September 2004. If implemented, the PERM program will make significant changes to the labor certification program. While there are many drawbacks to the proposed PERM program (increased job advertising, limits on special job requirements, etc.), it is expected that the processing time for a case under the PERM program will be much faster.

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