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COUNSEL FOR CORPORATE IMMIGRATION



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## Newsletter

### Immigration Law Update

#### Current Developments in Employment-Based Immigration

By Rosner Partners, L.L.C.

April 2008

- **USCIS Announces H-1B Nonimmigrant Visa Cap Reached**
- **New USCIS Rule Extending OPT for Some F-1 Students Working for Employers Enrolled in E-VERIFY**
- **New USCIS Rule Creating H-1B "Cap Gap" Relief Provision**

*This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.*

#### USCIS Announces H-1B Nonimmigrant Visa Cap Reached

On April 10, 2008 the United States Citizenship and Immigration Services (USCIS) announced that the annual cap on H-1B nonimmigrant visas available for Fiscal Year 2009 has been reached. The USCIS estimates that it has received approximately 163,000 H-1B petitions in the 5-day filing window for FY2009, which closed on Monday April 7, 2008. The agency further indicated that approximately 31,200 of the petitions received were filed under the advanced degree category.

Under a recent interim rule published by the USCIS, the petitions filed for the advanced degree cap of 20,000 H-1B visa numbers will be randomly selected via a computerized lottery procedure first. Any advanced degree cases not randomly selected effectively get a second bite at the apple. They will be added to the pool of cases filed under the standard H-1B cap of 65,000 H-1B visa numbers.

Based on the USCIS's estimates above, an advanced degree H-1B petition stands about a 64% chance of being selected for processing under the advanced degree cap. Cases in the standard H-1B pool (which would include the third of the cases filed under the advanced degree cap which do not survive that lottery) have about a 45% chance of being randomly selected in the lottery process for standard cap cases.

The USCIS reports they expect the computer-generated random selection lottery to commence the week of April 14th. Any H-1B cases not selected in the lottery procedure will be returned to the employer (or counsel) by USCIS together with the filing fees. The only exception to this is any case USCIS deems to be a "duplicate" filing. Pursuant to a new interim final rule, USCIS reserves the right to reject petitions, and not refund the filing fees, for cases found to be prohibited duplicate filings.

As **Rosner Partners** learns whether your H-1B matter was accepted under the lottery, or rejected by the USCIS, we will contact you on a case-by-case basis. In the event of an H-1B rejection, we will work with you to explore any other options available to bring key personnel on board.

#### New USCIS Rule Extending OPT for Some F-1 Students Working for Employers Enrolled in E-VERIFY

On April 4, 2008, the Department of Homeland Security (DHS) announced that it would extend from 12 to 29 months, the period of Optional Practical Training (OPT) available to certain F-1 students. Specifically, the new interim rule provides that F-1 students in OPT, who hold degrees in science, technology, engineering or

mathematics and who are working for employers enrolled in the E-VERIFY program, are eligible to apply for up to an additional 17 months of OPT.

As we previously reported, the E-VERIFY program is an internet-based system operated by DHS in partnership with the Social Security Administration. It allows participating employers to verify electronically the employment eligibility of their newly hired employees. The program is free and is optional in most states.

If you would like to know whether this OPT extension can be used to assist in a given case, or to learn more about E-VERIFY, please contact our office.

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### **New USCIS Rule Creating H-1B "Cap Gap" Relief Provision**

In the same interim rule discussed above, the DHS created a provision which offers relief to certain F-1 students whose period of stay or OPT will expire prior their H-1B visa petitions becoming effective on October 1, 2008. This "cap gap" relief provision is only available if the H-1B employer filed a petition to change the employee's status from F-1 to H-1B. Under this rule, the F-1 status of eligible students is automatically extended when the student is the beneficiary of an H-1B petition with an October 1st start date, accepted for processing in the lottery. (The automatic extension terminates if USCIS rejects, denies, or revokes the H-1B petition.) If eligible, the student may remain in the United States until October 1st. If the student is on OPT, he or she may continue working until the October 1 start date on the approved H-1B petition.

Please note that this provision was not announced until April 4, 2008, after nearly all H-1B petitions were filed. Prior to this new rule, an H-1B petitioner could not request a change to H-1B status unless the beneficiary would have been in valid F-1 status as of October 1, 2008.

Please contact Rosner Partners if you would like to know more about the new cap gap relief provision, and whether it can help you.

**Rosner Partners** helps corporations to bring foreign nationals to the U.S., and to obtain employment visas for U.S. citizens transferred abroad. We can also assist in obtaining permanent residence (green cards), student and exchange visitor visas, naturalization, and in preventing deportation. Please consider us for your immigration law needs.

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#### **Rosner Partners, Counsel for Corporate Immigration**

The Caxton Building • Suite 601 • 812 Huron Road • Cleveland, Ohio 44115 • [Map to our Offices](#)  
**Telephone: (216) 771-5588** • Facsimile: (216) 771-5894 • E-Mail: [immigration@rosnerlaw.com](mailto:immigration@rosnerlaw.com)

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