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COUNSEL FOR CORPORATE IMMIGRATION



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Immigration Law Update

**Current Developments in Employment-Based Immigration
By Rosner Partners, L.L.C.**

February 2010

- **H-1B cap filings for FY2011**
- **TPS designation for Haiti**
- **New procedures for Prevailing Wage Requests**

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.

Now is the Time to Initiate New H-1B Petitions for FY2011!

The filing date for H-1B petitions for beneficiaries who are subject to the annual quota is quickly approaching. If you are sponsoring such an employee for H-1B status or are seeking sponsorship for yourself, now is the time to get started. New H-1B petitions for employment starting dates of October 1, 2010 can be submitted starting on April 1, 2010.

It is anyone's guess how long the H-1B quota numbers will last this year. The H-1B quota for FY2010 was reached on December 21, 2009. In previous years, the quota was reached on the very first day that filing opened.

As most of our readers are all too well aware, the number of H-1B visas available for each fiscal year is grossly insufficient to meet the needs of the U.S. businesses across the country that rely on the contributions of foreign workers. At Rosner Partners, we are constantly urging our clients to plan ahead in initiating the H-1B petition process for new hires who do not currently hold H-1B status with another employer.

Employers who have not done so already must evaluate company needs for the next year and determine if H-1B workers may be required to meet business needs. In particular, we urge our clients to consider the company's needs with regards to interns and employees currently working pursuant to F-1 Optional Practical Training who may require an H-1B petition to extend their employment authorization beyond its current expiration date.

In the event that H-1B candidates are identified, kindly send us the necessary information to get started, including the foreign national's resume, job title, job description, job location and salary. The sooner we receive this information, the sooner we can prepare the petition for timely submission to USCIS.

Temporary Protected Status for Haitians

The Department of Homeland Security (DHS) has announced an 18 month designation of Temporary Protected Status (TPS) for the country of Haiti in light of the devastating earthquake that occurred on January 12, 2010. In light of this designation, certain Haitians in the U.S. may now be eligible for legal status and employment authorization through the TPS program. USCIS will process applications for TPS filed by nationals of Haiti as well as individuals without nationality who last habitually resided in Haiti. DHS currently estimates that approximately 100,000 to 200,000 individuals will be eligible for TPS.

Centralized Processing of Prevailing Wage Requests Now in Effect

As of January 1, 2010, the U.S. Department of Labor centralized processing of all Prevailing Wage Requests for PERM, H-1Bs, H-1B1s (for nationals of Chile and Singapore), H-2Bs and E-3s (for Australians). Previously, these were processed at State Workforce Agencies across the country. Now, they are filed directly with the U.S. Department of Labor (DOL).

When this policy was initially changed in January, prevailing wage requests had to be mailed in to a Washington, DC address at the DOL in order to be processed. The DOL has since implemented an online filing system for these requests. Our initial experience is that this change by the DOL has lengthened the time it takes to get a prevailing wage determination.

Special Note for PERM Cases: The NPWHC has advised that they are working to provide Prevailing Wage Determinations as quickly as possible, on a first-in, first-out basis. However, they encourage requestors to submit their Forms ETA 9141 at least 60 days in advance of the employers' initial recruitment efforts.

For additional information about any of the topics presented here, please [contact us](#).

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