



Business Immigration Monthly

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H-1B Quota for Fiscal Year 2011 Opens on April 1st – Employers Should Be Commencing the Preparation of H-1B Quota Subject Petitions at This Time

The H-1B quota for Fiscal Year 2011 (October 1, 2010 through September 30, 2011) will open on April 1, 2010. Similar to past years, the H-1B quota for Fiscal Year 2011 will be limited to 65,000. Also similar to past years, an additional 20,000 visas will be available to individuals who have earned U.S. Master’s or higher degrees. In Fiscal Year 2009 (October 1, 2008 through September 30, 2009), more than 165,000 petitions were filed against the H-1B quota of 65,000 and thus the quota was met during the initial filing period. In Fiscal Year 2010 (October 2, 2009 through September 30, 2010), the H-1B quota was not met until December 21, 2009. It is assumed that the H-1B quota for Fiscal Year 2010 remained open beyond the initial filing period and through December 21, 2009 due to the troubled economy and the more aggressive review of H-1B petitions by the U.S. Citizenship and Immigration Services (USCIS).

Although the H-1B quota for Fiscal Year 2010 was not met during the initial filing period, the H-1B quota for Fiscal Year 2011 may be met during the initial filing period due to the fact that the economy is currently improving and thus employers have begun hiring again. Therefore, we are encouraging employers that will be filing H-1B quota subject petitions to commence the process as soon as possible so that the petitions are ready to be filed during the initial filing period which commences on April 1, 2010. Due to changes in how the U.S. Department of Labor (DOL) processes Labor Condition Applications (LCAs), employers must allow additional time to process H-1B petitions. An H-1B petition may not be filed with the USCIS without an LCA certified by the DOL and the DOL may take 7+ days to process the LCA. If the H-1B quota for Fiscal Year 2011 is met during the initial filing period and employers are unable to file during this period, the earliest date upon which they will be able to file an H-1B quota subject petition will be in the Fiscal Year 2012 H-1B quota which will not open until April 1, 2011.

Additional information about the H-1B quota will be contained in our firm’s future Immigration Updates when it becomes available.



the employment-based immigrant visa categories. However, in the March 2010 Visa Bulletin, the DOS advances most employment-based immigrant visa categories the most that they have advanced this fiscal year. For example, the EB-3 World category advanced by approximately three months to December 15, 2002. The DOS may be more rapidly advancing the employment-based immigrant visa categories in order to ensure that all of the available visa numbers are used prior to the end of the government’s fiscal year on September 30, 2010.

The following is a comparison of the employment-based immigrant visa priority dates since the beginning of retrogression in October 2005:

	Oct 2005	Dec 2007	Jun 2008	Dec 2009	Jan 2010	Feb 2010	Mar 2010
EB-3 World	03/01/01	09/01/02	03/01/06	06/01/02	08/01/02	09/22/02	12/15/02
EB-2 China	05/01/00	01/01/03	04/01/04	04/01/05	05/01/05	05/22/05	07/08/05
EB-3 China	05/01/00	10/15/01	03/22/03	06/01/02	08/01/02	09/22/02	12/15/02
EB-2 India	11/01/99	01/01/02	04/01/04	01/22/05	01/22/05	01/22/05	02/01/05
EB-3 India	01/01/98	05/01/01	11/01/01	05/01/01	06/22/01	06/22/01	07/01/01
EB-3 Other Workers	10/01/00	10/01/01	01/01/03	06/01/01 05/01/01 (India)	06/01/01	06/01/01	06/01/01

Additional information about movement in the employment-based immigrant visa categories will be contained in our firm’s future Immigration Updates when it becomes available.

USCIS Clarifies TARP Restrictions in the H-1B Program for Institutions that Have Repaid the Government Funding

In February 2009, the Employ American Workers Act (EAWA) was enacted. The EAWA makes companies that have received funding under the Trouble Asset Relief Program (TARP) or Section 13 of the Federal Reserve Act H-1B dependent employers. Unlike other H-1B dependent employers, companies that are subject to EAWA are not exempt from the additional H-1B dependent employer requirements by hiring an exempt H-1B nonimmigrant. These additional H-1B dependent requirements include attesting to the U.S. Department of Labor (DOL) regarding the recruitment and non-displacement of U.S. workers when filing a Labor Condition Application (LCA).

Many companies that were subject to EAWA decided not to hire H-1B nonimmigrants due to the EAWA restrictions. However, over the past year, some of these companies have repaid the funding that they received through the TARP program. Although they repaid the funding, there was uncertainty as to whether they were still subject to the EAWA restrictions. The USCIS recently confirmed that if a company that received TARP funding fully repays the funding, the company is not subject to the EAWA restrictions and does not have to indicate on an H-1B petition that it is subject to these restrictions. With this clarification, many companies that have repaid their TARP funding may now resume considering H-1B nonimmigrants for their available positions.



DOS Proposes Fee Increase

The DOS has proposed increasing its fees for the various passport and visa services that it offers. The DOS stated that it is adjusting these fees in light of an independent study that indicated that the current fees are not fully covering the costs to provide requested passport and visa services. Therefore, the DOS stated that it is adjusting the fees to ensure that they reflect the cost of providing the services. The following is a list of the proposed increases for these various services:

Item	Proposed Fee	Current Fee
Passport Book Application Services for Applicants Age 16 or over (including renewals)	\$70	\$55
Additional passport visa pages	\$82	\$0
Passport Book Security Surcharge	\$40	\$20
File search and verification of U.S. citizenship	\$150	\$60
Application for Consular Report of Birth Abroad of a Citizen of U.S.	\$100	\$65
Documentation of formal renunciation of U.S. citizenship	\$450	\$0
Passport Card Application Services for Applicants age 16 or over (including renewals)	\$30	\$20
Making arrangements for a deceased non-U.S. citizen family member	\$200 Plus expenses	Consular Time Plus expenses
Immigrant visa application processing for immediate relative and family preference applications	\$330	\$355
Immigrant visa application processing for employment-based applications	\$720	\$355
Immigrant visa application processing for other visa classes	\$305	\$355
Diversity Visa Lottery Fee	\$440	\$375
Affidavit of Support Review	\$88	\$70
Determining Returning Resident Status	\$380	\$400
Immigrant visa security surcharge	\$74	\$45
Providing notarial service: First service	\$50	\$30



Providing notarial service: Each additional service	\$50	\$30
Certification of a true copy or that no record of an official file can be located: First copy	\$50	\$30
Certification of a true copy or that no record of an official file can be located: Each additional copy	\$50	\$30
Provision of documents, certified copies of documents, and other certifications by the Dept of State (domestic)	\$50	\$30
Authentications	\$50	\$30
Processing letters Rogatory and Foreign Sovereign Immunities Act (FSIA) judicial assistance cases	\$2,275	\$735
Scheduling/arranging appointments for depositions	\$1,283	\$475
Attending or taking depositions, or executing commissions to take testimony	\$309/per hour plus expenses	\$265/per hour plus expenses
Providing seal and certification of depositions	\$415	\$70
Consular time charges	\$231	\$265

This proposal is subject to a 30-day comment period. After the comment period, it is assumed that the DOS will finalize the increase later this year. Additional information about the implementation of the fee increase will be contained in our firm's future Immigration Updates.

CBP Coordinates with ICE and USCIS to Deter Fraud in the H-1B Program

Customs and Border Protection (CBP) has confirmed that it is working with ICE and USCIS to deter ongoing fraud in the H-1B program. In December 2009 and January 2010, CBP at the Newark, New Jersey International Airport denied admission to some H-1B nonimmigrants working for certain companies. The CBP Inspectors at Newark questioned the H-1B nonimmigrants about who they worked for, how they were paid, who paid their salary and their job duties. CBP headquarters confirmed that CBP Newark was working with USCIS' Fraud Detection and National Security (FDNS) Unit and ICE. CBP headquarters indicated that the recent inadmissibility cases range from simple documentary deficiency to visa fraud. CBP headquarters stated that if an H-1B nonimmigrant was determined to be inadmissible, the applicant was either allowed to withdraw his/her application for admission or could be subject to expedited removal based on the totality of the circumstances which are reviewed on a case-by-case basis.

Based upon the increased enforcement in the H-1B program, foreign nationals should review a copy of their H-1B petition and supporting documents prior to reentering the United States. Additionally, the foreign nationals may want to carry evidence to support the assertions made in the H-1B petition filed by their employer, including but not limited



Additionally, on-line registration is available at:
<http://www.masudafunai.com/RegisterEvent.aspx?event=5600&email=cbuell@masudafunai.com>. You may also register for the Seminar by contacting Ms. Carrie Buell at (312) 245-7500.

For more information about this or any other immigration law topic, please contact Bob White, at 847.734.8811 or via email at rwhite@masudafunai.com. Weekly Immigration Updates are provided under the Legal Update link of the Immigration Group Section of our firm's website at www.masudafunai.com.

About the Immigration Group

The Immigration Group of Masuda Funai provides immigration representations to publicly traded companies, privately held corporations, educational institutions, not-for-profit organizations and individuals in business immigration matters. As one of the larger immigration groups in the United States, we annually file more than 2,500 petitions on behalf of approximately 275 different corporate employers from such diverse industries as automotive-related, computer consulting, machine tool manufacturing, electronics, construction and equipment, banking and financial, health care and high tech.

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About Masuda Funai

Masuda Funai is a full-service law firm representing international and domestic companies operating and investing in the United States. Our 45 attorneys located in Chicago, Schaumburg and Los Angeles counsel clients in every aspect of business, including establishing, acquiring, and financing operations; ownership, development and leasing of real estate; transfer of overseas employees to the U.S.; employment, labor, and benefits counseling and dispute resolution; intellectual property, copyright and trademark; business litigation; creditors' rights and business risk management; structuring the distribution and sale of products and services throughout the U.S.; and estate planning and administration.

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