H-2B Cap Reached for Second Half of FY 2008

Insights
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On January 3, 2008, U.S. Citizenship and Immigration Services (USCIS) announced that it had received a sufficient number of H-2B petitions to reach the congressionally mandated cap of 33,000 for the second half of FY 2008. USCIS determined that January 2, 2008 is the "final receipt date" for new H-2B worker petitions requesting employment start dates before October 1, 2008. USCIS will reject any petition for new H-2B workers received after January 2, 2008 requesting employment start dates before October 1, 2008.

However, petitions for workers who are currently in H-2B status do not count towards the H-2B cap. Therefore, USCIS will continue to accept petitions filed to extend the stay of a current H-2B worker in the U.S.; change the terms of employment for current H-2B workers and extend their stay; or allow current H-2B workers to change or add employers and extend their stay.

The H-2B cap was reached so quickly because the H-2B returning worker exemption expired on September 30, 2007. Previously, H-2B workers who had been counted against the cap in one of the three previous fiscal years were exempt from the cap. However, this exemption has expired, and USCIS counted all H-2B petitions with employment start dates in the second half of fiscal year 2008 against the cap.

Please contact your immigration counsel to discuss whether your case is subject to the H-2B cap and, if so, to discuss other available visa options.

Some State Immigration Laws Effective January 1, 2008

Over the last year, many states have enacted their own employment-related immigration legislation and many of these laws went into effect on January 1, 2008. Remember to check with your local counsel to make sure you are in compliance with any new requirements in your state.

We have created a list identifying the employment-related immigration legislation for each state. Please click here to review our state survey in order to determine whether your state has enacted any employment-related immigration legislation that may affect your company.

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