

## DON'T LOSE YOUR LABOR CERTIFICATION

Insights

Jan 9, 2008

Pursuant to a regulation implemented by the Department of Labor last summer, all permanent labor certifications approved on or after July 16, 2007 must be filed within 180 calendar days of the approval. Likewise, all permanent labor certifications approved prior to July 16, 2007 must be filed within 180 calendar days of July 16, 2007. This means that employers have until Saturday, January 12, 2008 to file a permanent residence petition (Form I-140) for any labor certification approved on or before July 16, 2007.

Therefore, it is critical that employers examine all permanent labor certifications approved prior to and on July 16, 2007 and file I-140 petitions utilizing them by Friday, January 11, 2008. Likewise, employers should review all permanent labor certification approvals received after July 16, 2007 and create a system for making sure the permanent labor certifications are filed with I-140 petitions before the labor certifications expire. Please remember that the law no longer permits employers to substitute beneficiaries on approved labor certifications, so an I-140 petition can only be filed for the employee listed on the labor certification.

*Please contact your immigration counsel if you have an approved labor certification that must be utilized by January 12, 2008.*

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### OTHER NEWS:

#### Practice Pointer“ H-2B Petition Considerations In Light Of The Cap

As previously [reported](#), U.S. Citizenship and Immigration Services (USCIS) announced on January 3, 2008 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. This news was particularly distressing to employers that rely on H-2B

workers each year to sustain their business operations. However, employers should remember that even though the H-2B cap has been reached there are still options for obtaining H-2B workers.

While the H-2B cap prevents employers from petitioning for H-2B workers who are currently outside the U.S., employers can still file to extend the stay of a current H-2B worker in the U.S. Therefore, employers in need of temporary workers should consider recruiting current H-2B workers from other employers with complementary seasons. Additionally, there is a slight chance that Congress will increase the number of permitted H-2B workers or resurrect the returning worker provision. As a result, employers may wish to continue to pursue their temporary labor certification applications, because employers who abandon these applications will not be in a position to take advantage of these developments if they indeed occur. Please contact your Fisher Phillips attorney if you have any questions about the H-2B cap or how to recruit H-2B workers currently in the U.S.

**Reminder: H-1B Petitions Must Be Filed On April 1, 2008**

On April 1, 2008, USCIS will begin accepting new H-1B visa applications for FY 2009 for employment that will begin on October 1, 2008. The numerical cap for new H-1B visas is 65,000 each fiscal year, and an additional 20,000 H-1B visas are available for foreign workers with advanced degrees from U.S. academic institutions.

Last year, the H-1B cap was reached on April 2, 2007, which was the first day of the filing period. USCIS received approximately 150,000 cap-subject H-1B petitions, and USCIS used a random selection process to determine which H-1B cases to process. We expect the same thing to happen again this year. It is extremely likely that USCIS will receive more petitions than the cap allows on April 1, 2008, which will require USCIS to use a random selection process to choose which petitions will be processed.

As a result, employers should immediately evaluate their need for H-1B workers and consult with immigration counsel to have the H-1B materials prepared in advance and ready to be filed on April 1, 2008. In addition, employers should consider other visa options that may be available in case their H-1B petition cannot be processed as a result of the cap. Please contact your Fisher Phillips attorney if you have any questions.