

URGENT IMMIGRATION INFORMATION FOR EMPLOYERS

Immigration Alert
December 21, 2009

H-1B Filings Quickly Approach Cap

U.S. Citizenship and Immigration Services has received approximately 64,200 cap-subject H-1B visa filings towards the 65,000 standard H-1B visa quota as of Friday, December 18. Employers, however, may still file H-1B petitions for employment start dates in Fiscal Year (FY) 2010.

If your organization plans to file additional H-1B petitions for employment start dates in fiscal 2010, contact your Hodgson Russ Immigration Attorney immediately as we anticipate more filings in the days ahead.

Employers Hiring Undocumented Foreign Nationals Beware

The Obama Administration has made immigration reform one of its highest priorities and is stepping up enforcement against employers who hire undocumented foreign nationals. In previous attempts at comprehensive immigration reform, opponents have argued that until the United States can control its borders, no reforms should be implemented. To pre-empt this argument, the Department of Homeland Security is taking action against large corporate employees in a number of industries, including food processing, construction, and agriculture.

In a significant departure from the Bush years, mass raids focusing on individuals have been replaced by targeted enforcement against employers that knowingly hire foreign nationals who do not have permission to work in the United States — or have failed to properly complete I-9 employment eligibility forms or filed H-1B petitions that contain false statements.

Update I-9 Forms. Given the current scrutiny by both the Immigration and Customs Enforcement (ICE) and the United States Citizenship and Immigration Services (USCIS), it is urgent that employers review and update, if necessary, all I-9 forms to be sure they meet the statutory and regulatory requirements. Employers who fail to maintain proper I-9 records will be subject to large fines if they are audited by ICE — even if they only employ individuals authorized to work in the United States.

Prepare for Site Inspection. It has been reported that the new commissioner of immigration has authorized the Fraud Detection and National Security Division (FDNS) of USCIS to conduct up to 25,000 employer site visits in 2010, up from 5,000 such visits in 2009. In 2009, the focus of the FDNS site visits has been the

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H-1B program, with wages, working conditions, and job duties of the foreign nationals employed under the H-1B program receiving the most attention. There are serious consequences to a finding of fraud, both civil and criminal. Penalties may include fines, orders to pay back wages, barring the offending company's ability to file H-1B visa petitions — and in the most serious cases, imprisonment. Employers should be sure to have their public access files, required as a condition of the application submitted in support of the H-1B petition, available for inspection and to comply with the reasonable requests of FDNS inspectors.

