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NEWS UPDATE

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Subject: Five-Year Low for April 1st H-1B Submissions – Additional H-1B Hurdles for Employers

On April 1st, employers began filing H-1B petitions for their employees who require a first-time H-1B visa for work that will commence on October 1, 2010. Perhaps a true barometer of America's current economic well-being, only 19,100 petitions were filed for the coveted work visa during the first week of April compared to 63,000 during the same period in 2009. And, in 2008 and 2007, all H-1B visas – limited to 85,000 per fiscal year – were exhausted the first day they became available. Last year, the remaining 22,000 visas were available until late December.

Besides the economy, this year there are new hurdles that confront H-1B employers and their employees. First, employers will need additional lead time to prepare their petitions. The required labor condition attestation (LCA), now processed under the Department of Labor's new iCert Portal System, takes at least seven days for an approval instead of just one. Second, U.S. Citizenship and Immigration Services (USCIS) has altered its definition of what constitutes a valid employer-employee relationship as it relates to H-1B workers, imposing new rules on the types of activities in which H-1B workers can engage. Third, USCIS appears to be closely scrutinizing the authorship of credentials evaluations where education and work experience are combined. The agency has been denying petitions where the record does not clearly demonstrate that the individual providing the evaluation qualifies as an authorized signatory.

If you have any questions, email us at contactRS@rudnickspector.com.

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