

Employers' Immigration Update re: H-1B Cap Filing Alert, DHS Final Rule for STEM, Deportation Orders

Friday, March 11, 2016

H-1B Cap Filing Alert

Each year, the U.S. Citizenship and Immigration Services issues 65,000 H-1B visas and 20,000 “master’s cap” visas. April 1, 2016, is the first day on which an H-1B petition may be filed for FY 2017, in anticipation of an October 1, 2016, start date. Last year, USCIS accepted 233,000 petitions in the first week; a lottery was conducted and more than 60 percent of all petitions were rejected. Employers need to be prepared to file H-1B petitions on April 1.

DHS Issues Final Rule for Additional Period of Work Authorization for STEM Graduates

The U.S. Department of Homeland Security has issued a final rule that allows foreign graduates of Science, Technology, Engineering, and Math (“STEM”) programs from U.S. universities an additional 24 months of F-1 Optional Practical Training (“OPT”) work authorization. The [new rule](#) will be published in the Federal Register on March 11, 2016. It will not go into effect until May 10, 2016.

The new rule allows foreign students holding F-1 status and graduating with STEM degrees to extend their period of OPT from an initial period of 12 months to a total of 36 months. The new 24-month period was increased from a 17-month period. OPT allows F-1 students and graduates to work in the United States either during their schooling or after they graduate.

New Rule Provides Additional Flexibility, Enhanced Opportunities for Certain Highly Skilled Workers

Additional flexibility and enhanced opportunities for certain highly skilled workers are provided in an advance copy of an updated [rule](#) from the Department of Homeland Security.

The rule covers workers who are in the U.S. in H-1B1 (from Chile and Singapore), E-3 (from Australia), temporary workers in the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transition Worker (CW-1), and immigrant classification for outstanding professors and researchers (EB-1). See [our blog](#) for more information.

U.S. Supreme Court to Consider Obama Deferred Deportation Orders

The U.S. Supreme Court has granted certiorari in *Texas et al. v. U.S. et al.* ([No. 15-674](#)) to determine whether President Barack Obama can proceed with plans to defer deportation and provide work authorization to millions of individuals currently in the United States without lawful status. The Court also indicated that it will take up the additional issue of whether the Obama Administration’s action violates a constitutional clause that requires the president to faithfully execute the law (i.e., the Take Care Clause in Article II of the Constitution). The high court will hear arguments this April and a decision is likely to be issued this June, before the end of the Court’s current session.

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