

Practice Areas

BUSINESS

L-1 Visas

H-1B

H-1B Transfers

Visas

TN Visas (NAFTA)

Special Visas for Other Countries:

- Australia
- Chile / SingaporeE-1

E-1 Visas

E-2 Visas

PERM Labor Certification

HOSPITALS / HEALTHCARE

H-1C Visas

H-1B Visas for Doctors

FAMILY

Spouse / Fiancée Visas

Permanent Residence for Family
within U.S.

Naturalization /Citizenship

AMNESTY

Deportation During Pendency of H-1B Visa Extension Request

Posted: November 23rd, 2010

Early this month, the American Immigration Lawyers Association (“AILA”) and the Legal Action Center (“LAC”) of the American Immigration Council filed amicus briefs in the case of *Badrani v. Department of Homeland Security* (U.S. District of Connecticut) arguing that an H-1B employee with an expired work visa should not be subject to arrest, detention and/or deportation if a pending extension of his work request remains under review.

If the LAC and AILA argument is successful in persuading the Connecticut federal court, then H-1B employers who follow the law would not lose valuable employees merely due to commonplace delays in processing of paperwork. On the other hand, if the government is successful in rebuking the plaintiff’s action, then employers will be hard-pressed to retain key employees with training in designated specialty occupations when there is any gap in paperwork processing due to bureaucratic delays.

In this case, the employer actually requested an extension of the work visa more than a month before the deadline to do so, paying a \$1,000 premium processing fee to obtain a decision prior to expiration. Nonetheless, the employer still saw no action on the request nearly seven months after it was made, and the plaintiff was arrested of overstaying his work visa.

This illustrates the importance of working with counsel on paperwork for work visas as early as possible. If you are an employer, and you know that you are likely to need a foreign specialty worker for longer than his or her original term, then you should move forward with a work extension filing as soon as possible.

If you have a problem or a question related to the hiring or continuation of foreign specialty workers, do not hesitate to call our office at (847)564-0712 and/or check out the pertinent section of [our Website](#).