

## Immigration Insights (January 2011)

January 31, 2011

### H-1B Cap for FY11 Has Been Reached

U.S. Citizenship and Immigration Services (USCIS) announced last week that it has received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2011. The final date on which USCIS accepted new H-1B case was January 26, 2011. Because USCIS received more petitions on January 26th than there are H-1B slots available, USCIS will apply a computer-generated random selection process to all cap-subject petitions that it *received* on January 26, 2011. USCIS will use this process to select petitions that it will accept. USCIS will reject all remaining cap-subject petitions not randomly selected and will return the petitions and filing fees.

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### February 2011 Visa Bulletin

The U.S. State Department (DOS)'s [February Visa Bulletin](#) reflects little movement in the permanent resident or "green card" Employment Second Preference (EB2) and Third Preference (EB3) categories. The EB2 "all chargeability" category remains current, while the cutoff date for EB2 China advances only one week to July 1, 2006. The cutoff date for EB2 India shows no movement and remains at May 8, 2006. The EB3 all-chargeability date advances one week to February 22, 2005, and EB3 China date advances two weeks to January 1, 2004. The cutoff date for EB-3 India advances three weeks to February 22, 2002. The Employment First Preference category remains current across-the-board.

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### Crimes and Immigration Consequences

Endless traps exist under the U.S. Immigration and Nationality Act (INA) for foreign nationals who have been convicted of a crime. Dinsmore's Douglas Halpert goes into depth about these traps and some of the implications that arise when a foreign national is convicted of a crime. Please click [HERE](#) to view this article.

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### Guidance on Completing I-9 in "Extension of Stay" Situations

U.S. Citizenship and Immigration Services revised its [Handbook for Employers: Instructions for Completing Form I-9](#) effective January 5, 2011. The revised Handbook contains expanded guidance regarding I-9 completion for lawful permanent residents, H-1B employees, F-1 students, and J-1 exchange visitors. The Handbook also offer guidance to employers in updating their I-9 forms when they have filed a Form I-129 nonimmigrant worker petition to USCIS to request an extension of stay for an employee.

According to USCIS, employers should take the following actions when they have submitted a timely filed extension petition:

Existing employees are authorized to continue to work for employer, for up to 120 to 240 days depending on the category petitioned for—or until USCIS denies the petition, whichever comes first. In this scenario, employers should retain the following documents with the employee's existing Form I-9 to show that it filed for an extension of stay on the employee's behalf:

- A copy of the new Form I-129;
- Proof of payment for filing a new Form I-129; and
- Evidence that you mailed the new Form I-129 to USCIS.

After submitting Form I-129 to USCIS, employers will receive Form I-797(C) from USCIS acknowledging that its petition is pending. This receipt notice should be retained with the employee's Form I-9.

If USCIS approves the application/petition for an extension of stay, employers will receive a Form I-797A, which includes an expiration date and an attached Form I-94A, Arrival/Departure Record. Employers should record the document title, number and expiration date listed on the notice in Section 3 of Form I-9.

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### **May Employers Recover Costs of H-1B or Permanent Resident Sponsorship?**

The rules regarding an employer's ability to seek reimbursement of attorney fees and other costs associated with sponsoring foreign nationals for H-1B specialty occupation worker classification and for permanent resident (green card) status have evolved over the last several years. Please click [HERE](#) for a summary that highlights those H-1B and PERM Labor Certification Application fees and costs that must be borne by the employer, and the fees and costs that may be reimbursed by the foreign national if the employer opts to seek repayment.