Office of Communications

U.S. Citizenship and Immigration Services

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USCIS ANNOUNCES INTERIM RULE ON H-1B VISAS

Rule Modifies Selection Process and Prohibits Multiple Filings

WASHINGTON ─ U.S. Citizenship and Immigration Services (USCIS) transmitted an interim final rule to the *Federal Register* today that prohibits employers from filing multiple H-1B petitions for the same employee. These changes will ensure that companies filing H-1B petitions subject to congressionally mandated numerical limits have an equal chance to employ an H-1B worker. To ensure a fair and orderly distribution of available H-1B visas, USCIS will deny or revoke multiple petitions filed by an employer for the same H-1B worker and will not refund the filing fees submitted with multiple or duplicative petitions.

This rule does not preclude related employers (such as a parent company and its subsidiary) from filing petitions on behalf of the same alien for different positions, based on a legitimate business need. The interim final rule becomes effective upon publication in the *Federal Register.*

Last August, President Bush announced that the Administration would be undertaking a series of immigration and border security reforms. The changes to the H-1B filing process under this rule are an important part of that initiative.

On April 1, 2008, employers may file petitions requesting H-1B workers for fiscal year 2009 employment starting on October 1, 2008. For fiscal year 2009, Congress has set a limit of 65,000 for most H-1B workers. Additionally, the first 20,000 H-1B workers who have a U.S. master's degree or higher are exempt from the cap. Under current procedures, which are not changed by this rule, once USCIS receives 20,000 petitions for aliens with a U.S. master's degree or higher, all other cases requesting the educational exemption are counted toward the 65,000 cap. Once the 65,000 cap is reached for a fiscal year, USCIS will announce that the cap has been filled and reject further petitions subject to the cap.

This rule also stipulates that if USCIS determines the number of H-1B petitions received meets the cap within the first five business days of accepting applications for the coming fiscal year, USCIS will apply a random selection process among all H-1B petitions received during this time period. If the 20,000 advanced degree limit is reached during the first five business days, USCIS will randomly select from those petitions ahead of conducting the random selection for the 65,000 limit. Petitions subject to the 20,000 limit that are not selected in that random selection will be considered with the other H-1B petitions in the random selection for the 65,000 limit.

The rule further clarifies that USCIS will deny petitions that incorrectly claim an exemption from any H-1B numerical limits. Those filing fees will not be returned.

This interim final rule can be viewed, along with additional information on this rule and the H-1B program, at USCIS' website at www.uscis.gov.

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