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Practices: Immigration

USCIS CONFIRMS NO ANTICIPATED PROCEDURAL CHANGES FOR FY 2019 H-1B CAP SEASON

The USCIS announced that it intends to follow the same procedures that were used in previous years for the Fiscal Year 2019 H-1B season. Earlier this year, the USCIS had contemplated using a pre-registration system to accept H-1B petitions for Fiscal Year 2019 filings. The USCIS' recent announcement confirms that the filing procedures will not change for Fiscal year 2019. The USCIS also stated that it does not anticipate that premium processing will be suspended for H-1B petitions not subject to the quota. However, there may be a short suspension of premium processing for H-1B cap-subject petitions.

USCIS ANNOUNCES E-VERIFY REQUIREMENT FOR NEW FEDERAL CONTRACTORS AND SUBCONTRACTORS

On January 25, 2018, USCIS announced an additional requirement to the E-Verify program for federal contractors and subcontractors with the Federal Acquisition Regulation (FAR) requirement. Effective January 5, 2018, new federal contractors and subcontractors with a FAR requirement must provide their Data Universal Numbering System (DUNS) during the E-Verify enrollment process. As to existing E-Verify employers designated as federal contractors with a FAR requirement, they do not have to provide their DUNS number, but will be prompted to enter it in E-Verify when they update their profile.

THE IMMIGRATION INNOVATION ACT OF 2018 (I-SQUARED")

On January 25, 2018, Senators Orrin Hatch (R-UT) and Jeff Flake (R-AZ) introduced the Immigration Innovation ("I-Squared") Act of 2018 (the Act). The Act amends the Immigration and Naturalization Act ("INA") by modernizing the H-1B visa and employment-based green card processes. The following reforms are proposed in the proposed Immigration Bill:

Employment-Based Nonimmigrant Visas (H-1B Visas)

- *U.S. advanced degrees*: Uncaps the existing exemption (currently 20,000) for holders of U.S. master's degrees or higher from the annual numerical limitation on H-1B visas for individuals who are being sponsored for or who will be sponsored for a green card.
- *Statutory cap*: Increases the annual base allocation of H-1B visas from 65,000 to 85,000.

- *Market escalator*: Creates a market-based escalator to allow the supply of H-1B visas to meet demand. Under the escalator, up to 110,000 additional H-1B visas (for a total of 195,000) may be granted in a fiscal year if certain demand requirements are met.
- *Lottery prioritization*: Prioritizes adjudication of cap-subject H-1B visa petitions for holders of U.S. master's degrees or higher, holders of foreign Ph.D.'s, and holders of U.S. STEM bachelor degrees.
- *Hoarding penalties*: Subjects employers who fail to employ an H-1B worker for more than 3 months during the individual's first year of work authorization to a penalty.
- *Prohibitions on replacement*: Prohibits employers from hiring an H-1B visa holder with the purpose and intent to replace a U.S. worker.
- *Work authorization for H-1B spouses and children*: Provides work authorization for spouses and dependent children of H-1B visa holders.
- *Worker mobility*: Increases H-1B worker mobility by establishing a grace period during which H-1B visa holders can change jobs without losing legal status.
- *Dependent employers*: Updates 1998 law exempting H-1B dependent employers from certain recruitment and nondisplacement requirements. Raises from \$60,000 to \$100,000 the H-1B salary level at which the salary-based exemption takes effect. Narrows education-based exemption to H-1B hires with a U.S. Ph.D. Eliminates exemptions for "super-dependent" employers altogether.

Green Cards

- *Per-country numerical limits*: Eliminates annual per-country limit for employment-based green cards and adjusts per-country caps for family-based green cards.
- *Green card recapture*: Enables the recapture of green card numbers that were approved by Congress in previous years but not used.
- *Exemptions from green card cap*: Exempts spouses and children of employment-based green card holders, holders of U.S. STEM master's degrees or higher, and certain individuals with extraordinary ability in the arts and sciences from worldwide numerical caps on employment-based green cards.
- *Worker mobility*: Increases worker mobility for individuals on the path to a green card by enabling such individuals to change jobs earlier in the process without losing their place in the green card line.
- *Employment-based conditional green cards*: Creates new conditional green card category to allow U.S. employers to sponsor university-educated foreign professionals through a separate path from H-1B.

Student Visas

- *Dual intent*: Enables F-1 student visa holders to seek permanent resident status while a student or during Optional Practical Training (OPT).

STEM Education and Worker Training

- *Promoting American Ingenuity Account*: Increases fees for H-1B visas and employment-based green cards and directs fees toward state-administered grants to promote STEM education and worker training.