

VISA NUMBER CRUNCH

I. H-1B VISAS

- 65,000 annual cap exhausted until 10/1/2006,
plus 20,000 for U.S. advance degree holders

Exemptions for:

- a) University or college employees, including those working for related research entities
- b) H-1C for nurses to work in underserved areas
- c) H-1 transferees
- d) Those with H-1 status at any time during the last six years (as long as they have not remained outside the U.S. for one year or longer)
- e) Singapore and Chile
- f) E-3 for Australians

Other work visa options:

- a) TN for Canadians or Mexicans
- b) J-1
- c) L-1
- d) E-1/E-2
- e) I (media employees)
- f) O
- g) R
- h) B-1 in lieu of H-1 while on non-U.S. payroll

Other non-work visa options:

- a) F-1
- b) M-1
- c) B-1/B-2

May file beginning April 1, 2006 for October 1, 2006 start date - 60 day (F-1) or 30 day (J-1) grace period but no extensions granted last year and none anticipated for this year.

II. RETROGRESSION OF EMPLOYMENT BASED IMMIGRANT VISAS

- a) EB-1 China/India (1/1/04 / 1/1/05)
- b) EB-2 China/India (1/1/03 / 07/1/02)
- c) EB-3 worldwide (both skilled and unskilled) 5/1/01; China (5/1/01); India (2/1/01); Mexico (4/8/01)

May file labor certification and/or I-140 but may not file I-485 until priority date is reached

A. Adverse Consequences

- 1) Delay in green card issuance

- 2) Delay in work permits/travel permits for family members
- 3) Age out for children (CSPA grandfather provisions)
- 4) Cannot use 180 day portability provision so must stay with same employer

B. Solutions:

- 1) File PERM labor certification and/or I-140 as soon as possible to establish priority date
- 2) Cross chargeability
- 3) For non-PRC/Indian, file EB-1 or 2
- 4) File family-based case, if priority date better
- 5) Extend H-1/H-4 status; extraordinary 1 and 3 year H extensions; L-1B cannot be extended so change of status to H-1; L-1A o.k. as long as not EB-1 PRC/Indian; E-1/E-2 can be extended without limitation
- 6) May need to transfer employee(s) abroad for one year and then re-start H or L status
- 7) Recapture of H-1 and L-1 time abroad

For pending I-485 cases, they will be held by CIS or Department of State until priority date is reached and visa number is available

Projection: still have over 100,000 pre-PERM cases, plus PERM cases thus it is not likely to improve anytime soon

III. PERM - IS IT WORKING?

- a) March 28, 2005 onward
- b) Backlog elimination offices (Philadelphia and Dallas)
- c) 60 day recruitment
- d) Professional v. non-professional recruitment
- e) 60 day adjudication
- f) Audits (cannot withdraw once under audit)
- g) Electronic filing v. mail in
- h) Need client to create a sub-account for on-line filing