

Stay Current.

December 9, 2004

In this Alert:

- * *Retrogression of Visa Numbers for Employment-Based Third Preference Category*
- * *Increased Fees for H-1B and L Petitions*

Retrogression of Visa Numbers for Employment-Based Third Preference Category

As was expected, the Visa Bulletin just published by the U.S. State Department indicates that, beginning in January 2005, there will be a backlog in visa number availability in the employment-based third preference category (“skilled workers, professionals and other workers”) for foreign nationals from China (mainland born), India and the Philippines. (The Visa Bulletin may be found at http://travel.state.gov/visa/frvi_bulletincurrent.html.) As a result, individuals from these countries with a priority date of January 1, 2002 or later will not be able to apply for adjustment of status to permanent residence until immigrant visa numbers are available, as determined by their priority dates. (A priority date is established on the date of filing the labor certification application, or immigrant petition if no labor certification application is required.)

Individuals affected by the retrogression must file adjustment of status applications before the end of December or face delays in filing. (“Adjustment of status” is the final stage of the “green card” application process for persons processing through the immigration service in the U.S. rather than at a U.S. Embassy or Consulate abroad. Persons processing applications abroad will not be scheduled for immigrant visa appointments until their priority dates are current.) Note that affected cases which have already been filed will be placed on hold until the appropriate immigrant visa numbers become available.

Increased Fees for H-1B and L Petitions

The Consolidated Appropriations Act of 2005 was enacted on December 8, 2005. The Act reinstates the education and training fee that had sunset in October 2003, raising it to \$1,500 for employers with twenty-six or more employees (those with twenty-five or fewer employees will pay a reduced fee of \$750). The fee is effective immediately. In addition, the Act adds a new “fraud prevention and detection fee” of \$500 for initial H-1B and L-1 petitions and for petitions involving a change of employer (though not for extensions of status with the same employer). The new \$500 fraud prevention fee must be submitted with petitions filed on or after March 8, 2005 (ninety days from enactment).

For more information regarding the Consolidated Appropriations Act of 2005, please see our November 23, 2004 Client Alert at <http://paulhastings.com/media/news/media.1026.pdf>.