

September 27, 2002

Immigration Newsflash

House of Representatives Passes Bill With Important H-1B Extension Provisions; Senate Likely to Follow Suit Shortly

A revision of the law governing H-1B visa extensions, urgently needed by many employers, passed the House of Representatives overwhelmingly on September 26. The Senate is expected to pass these provisions very soon, and the President is expected to sign them into law. The H-1B provisions are contained in H.R. 2215, the "21st Century Department of Justice Appropriations Authorization Act."

In summary, the new provisions will permit an H-1B visa to be extended beyond the current 6-year limitation if a labor certification application for permanent residence has been pending for at least 365 days, even though such labor certification has not yet been approved. Current law was last revised in 2000 in order to permit an extension beyond 6 years, but only where a labor certification (where one is required) was filed at least 365 days prior to the extension petition, and where such labor certification was approved so that an immigrant visa petition could be filed. However,

severe backlogs in the processing of labor certifications at the Department of Labor (DOL) have prevented employers from taking advantage of this provision. The result has been that, in many instances, the 6-year limitation on H-1B status is reached before the labor certification is approved. Employers have faced the prospect of terminating valued employees or relocating them abroad, thus disrupting important projects. The new extension provisions should prevent this result, as long as employers ensure that labor certification applications are filed at least 365 days prior to the end of the 6th year of H-1B status. Of course, careful and individualized planning is most important. In many, if not most, cases, there are various reasons why labor certification applications should be filed at the earliest opportunity, and not delayed to the 5th year of H-1B status.

It is likely that the new provisions will apply not only to persons who are

currently in H-1B status, but also to persons who have already exceeded the 6-year limitation and obtained another status (*e.g.*, student or business visitor) or relocated abroad. Although the legislation is not completely explicit in this particular respect, the legislative history is expected to make it clear that this was the intent of Congress.

Paul Hastings immigration lawyers have been working to shape the language of the H-1B provisions in H.R. 2215 and are coordinating with the American Immigration Lawyers Association (AILA) and Congressional aides to monitor the legislation's progress in the Senate.

The information in this Alert is not intended to be legal advice. However, if you require legal assistance or would like additional information about immigration matters, please contact your local Paul Hastings representative or Daryl Buffenstein at 404-815-2232 or via email at darylbuffenstein@paulhastings.com.

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