



IT'S TIME AGAIN FOR REVIEWING YOUR H-1B NEEDS

In recent years, the H-1B cap has been reached in record time. Last year, the cap was reached on April 1, 2008, the first day that U.S. Citizenship and Immigration Services (“USCIS”) accepted applications for each fiscal year. Indeed, of the petitions received on that date, USCIS randomly selected those that would be processed. We have no reason to believe that this year will be any different.

As reported in our [January 2007 E*Zine](#), if you are thinking about hiring foreign nationals in a specialty occupation, then you need to act quickly. Planning ahead may help your business secure the foreign employees it needs. A “specialty occupation” is an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation, and which requires the attainment of a bachelor’s degree or equivalent as a minimum requirement to perform the job duties.

The filing period for employers to submit their new H-1B “subject to cap” petitions (*i.e.*, not a request for an extension) will begin this year on Tuesday, March 31, 2009. However, you may not employ a foreign national under an H-1B visa until October 1, 2009. You should contact your immigration counsel now to begin the process as soon as possible. This will give you, the alien, and any third parties, such as translators or academic evaluation professionals, time to gather and prepare the necessary information and documents.

INCLUDE KEEPING YOUR PRACTICE IN GOOD STANDING AS PART OF YOUR NEW YEAR’S RESOLUTION.

On December 17, 2008, the federal government released a new version of Form I-9 which must be used beginning **February 2, 2009**. No previous editions of the form will be accepted. The revised document is now available at www.uscis.gov/i-9. In addition to using the new form for new hires on or after February 2, employers who are required to re-verify any documents (even for a long term employee) will need to ensure that the presentation of documents complies with the new I-9 form.

The new rule makes the following changes:

- No expired documents may be presented during the verification process.
- Documents that are no longer issued by USCIS have been eliminated from List A. These documents include Forms I-688 (Temporary Resident Card), I-688A (Employment Authorization Card), and I-688B (Employment Authorization Card).
- A temporary I-551 notation on a machine-readable immigrant visa along with a foreign passport with a temporary I-551 stamp is added as a List A document.



- Also added as List A documents are a passport from Federated States of Micronesia (“FSM”) or the Republic of the Marshall Islands (“RMI”) along with a valid Form I-94 or I-94A reflecting nonimmigrant admission under the Compact of Free Association Between the U.S. and the FSM or RMI.

A revised Handbook for Employers should be available soon and may be downloaded from the [USCIS website](#).

For more information on maintaining good employment verification practices, please refer to our [January 2007 E*Zine](#), where we address issues such as performing self-audits, responding to DHS letters, and preparing for visits from ICE agents.

– [Laurie M. Chess](#), [Mary Ellen Burggraf Jordan](#), and [Iris Hernandez](#)



Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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