

Tuesday, January 9, 2007

On behalf of the entire staff of Garganigo, Goldsmith & Weiss, we would like to wish you a very happy, healthy and prosperous New Year.

USCIS Interoffice Memo of December 5, 2006

In December 2006, Michael Aytes, the USCIS Associate Director, Domestic Operations, issued a very important Interoffice Memorandum concerning periods of admissions for aliens in the H and L visa category. Because so many of you extensively utilize these visas and since the memo reflects certain changes in USCIS policy that may affect the plans of both your current and prospective employees, we have provided a detailed summary and explanation of the memo. If you would like a complete copy of the memo, please contact us.

1. Time spent in H-4 or L-2 dependent status does not count against the maximum allowable period of stay.

For example, until the release of this memo, it was USCIS' position that if the spouse of an H-1B visa holder who had H-4 dependent status for two years wanted to obtain an H-1B visa she would be limited to just four years as an H-1B (six years minus the two years she had already spent in H-4 status). Under this memo, she would be entitled to a full six years as an H-1B.

2. An H-1B alien who qualifies under AC 21 for time beyond the 6 year limit does not have to be in H-1B status when requesting the additional time.

AC 21 provides exemptions from the six year H-1B limit to those who filed labor certifications more than 1 year before the extension request or those who have I-140 petitions already approved in their behalf. This change effectuated by the memo says that the alien does not have to be in H-1B status to request the additional time.

For example, they might have converted their status to H-4 or E or might have returned to their home country because their six year maximum period was reached.

3. Options available to those who had H-1B visa status (but did not stay in the US for the full six year maximum) and departed the U.S. for more than one year.

If a previous H-1B visa holder (who did not stay in the US for the full six year period) has been outside the US for more than one year, he would be eligible for a new six year period. However, because of the general unavailability of H-1B visa numbers, he would now have two options: a) he can be readmitted to the U.S. for the remainder of the initial six year period without being subject to the H-1B cap or b) he can seek to be admitted as

a new H-1B alien subject to the cap

We understand where this might be confusing so if you have any employees who might be affected by the changes announced by the memo, please contact our office.

Preparation for New H1B

Although this is only January, we urge you to contact us promptly when you identify a potential hire or transferee for whom you would like to obtain an H-1B visa.

Considering how quickly after April 1 (the first day new H-1B petition can be filed for the next immigration fiscal year) the government ran out of H-1B visa numbers last year, the only way to ensure that you will not "miss the boat" will be to file your new H-1B petitions as close to April 1, 2007 as possible.

Since some petitions might require extra preparation time, e.g., those requiring educational and/or work equivalency evaluations, or for those jobs not readily approvable by USCIS as specialty occupations which may also require professional evaluations, the earlier we begin the preparation, the greater will be the likelihood we will not miss the April 1, 2007 filing date.