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# LABOR AND EMPLOYMENT BULLETIN

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## **RARE WINDOW OF OPPORTUNITY: H-1B VISA QUOTA NOT YET REACHED**

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The economic recession has created an unusual window of opportunity for employers who want to legally employ foreign nationals in specialty occupations, but have not been able to do so because of the limited number of H-1B visas available.

Each year, Congress authorizes up to 65,000 “cap-subject” H-1B visas and 20,000 “advanced degree” H-1B visas for graduates of U.S. colleges and universities. Historically, the number of applications received by USCIS on April 1, the first day applications may be submitted, has far exceeded the number of available visas. Therefore, by the second week of April, it was too late for an employer to apply for an H-1B visa. Further, even if an application were submitted on April 1, there was no guarantee it would be granted.

This year is different. As of May 29, 2009, USCIS had received only 45,800 H-1B cap-subject petitions and approximately 20,000 petitions qualifying for the advanced degree cap exemption. Therefore, USCIS could still accept approximately 12,400 H-1B cap-subject petitions. In addition, USCIS has announced that it will continue to accept H-1B advanced degree petitions as not all petitions will be approved and some will be withdrawn.

U.S. employers legally employing foreign nationals who are recent graduates of U.S. universities and who have work authorization under the Optional Practical Training Program (OPT) have an opportunity to file H-1B petitions for these foreign nationals and thus secure



their employment authorization for the next three years. The quota will likely be reached before September of this year, so the window of opportunity may be short.

If you have questions regarding H-1B visas or foreign worker visa petitions, please feel free to contact us.

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