

**NEW LEGISLATION BENEFITS**  
**PROFESSIONAL WORKERS ON VISAS**

**by Robin L.H. Vermette, January 2001**

In October, long-awaited legislation was passed by Congress that greatly benefits the process for H-1B nonimmigrant visas and the immigrant process for various workers, particularly in the high tech and education communities. Senate Bill 2045, the American Competitiveness in the 21<sup>st</sup> Century Act of 2000, and H.R. Bill 5362, the H-1B Fee Increase, were signed into law as P.L. 106-313 by the President on October 17, 2000. The following is a summary of key provisions:

**H-1B Issues**

- The new law increases the yearly number of H-1B visas to 195,000 for the next three years.
- The cap on H-1Bs will not apply to anyone employed, or who has an offer of employment, at a college or university, elementary and secondary schools, or a related nonprofit entity. It also will not apply to a nonprofit research organization or a government research organization.
- Persons exempt from the cap by virtue of their employment with one of the entities described above who subsequently change employers to one that is not described would be counted toward the cap in the year they change employers.
- The INS will not count someone toward the H-1B cap if they have had H-1B status within the last six years unless they have left the US for a year and are entitled to six more years of H-1B status.
- An H-1B nonimmigrant applicant working for one employer is allowed to begin work for a new employer once a new H-1B petition has been filed with the INS as long as the individual is in lawful status at the time of filing and has not engaged in any unauthorized employment since his or her last lawful admission.
- The education and training fee charged by the INS for H-1Bs has been increased from \$500 to \$1000. This is added to the application fee of \$110, thus bringing the total INS filing fees for an H-1B to \$1110. The fee will become effective December 17, 2000. Exempted from the additional \$1000 fee are colleges, universities, elementary and secondary schools, and nonprofits engaging in established curriculum-related clinical training of students at higher educational institutions.

**Issues Related to Immigrant Petitions**

- Foreign employees are limited to six years on the H-1B visa. For some H-1B nonimmigrants going through the immigrant visa (“green card”) process, the lengthy application process might not be completed within their six-year maximum. The new bill allows extensions of the H-1B status beyond the six-year maximum, in one-year increments, if a labor certification or I-140 Immigrant Petition has been pending at least 365 days.
- The law allows an individual who has an I-140 Immigrant Petition filed on his or her behalf and who would be subject to per-country limits (such as India and China) to extend his or her nonimmigrant status until the adjustment for permanent residence application is decided.

- The new law brings a major change for individuals who have filed for adjustment of status and whose cases have been pending for 180 days or more. Previously the individual was bound to the original petitioning employer. However, now the person may change jobs or employers without affecting the validity of their I-140 immigrant petition or underlying labor certification, as long as the new job is in “the same or a similar occupational classification” to the job in the original petition and labor certification.

Although the INS has not issued regulations or policy guidance at this point, the law was officially enacted on October 18, 2000. The sole exception is the increase in the H-1B petitioner fee which takes affect on December 17.