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# ROSNER, ORTMAN & MOSS

COUNSEL FOR IMMIGRATION PARTNERS

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## Immigration Law Update

### Current Developments in Immigration

#### Greetings!

*This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.*

### **H-1B Cap Reminder**

If you are considering hiring foreign talent in 2015 who will require H-1B sponsorship, let us know right away. H-1B petitions for those subject to the quota must be filed on April 1. Once we hit April 1, your opportunities for hiring foreign professionals will be significantly reduced thanks to the Congressional limit on H-1B visas. As a reminder, only 85,000 H-1B visas are available each year, with 20,000 visas reserved for beneficiaries who hold a U.S. Master's degree. Analysts are predicting that, like last year, applicants for the next fiscal year will be selected on a lottery basis in the beginning of April.

### **New Rule Authorizes H-4 Employment for Eligible Spouses**

Effective May 26, 2015, U.S. Citizenship & Immigration Services will begin accepting employment authorization applications submitted by the H-4 dependent spouses of certain H-1B nonimmigrants currently in the employment-based "Green Card" pipeline. This new rule is a

significant departure from past practice, and represents a long-overdue benefit for H-4 spouses who, under the previous rule, may have been disadvantaged for a decade or more without work authorization while waiting for immigrant visa numbers to advance.

In order to qualify for the new benefit, the H-4 dependent must be married to an H-1B nonimmigrant who :

- Is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker; or
- Has received a grant of H-1B status beyond the 6-year limit under section 106(a) or (b) of the American Competitiveness in the Twenty-first Century Act.

As a reminder, obtaining an employment sponsored Green Card is a three-step process. Labor Certification is the first step and the I-140 petition is the second step. For applicants in certain categories, there is a wait of several years before they can advance to the final step and actually apply for the Green Card. In order for an H-4 spouse to qualify for employment-authorization under the new rule, the H-1B worker must have either completed the second step OR started the first step and successfully applied for at least a seventh year of H-1B status under AC21. (Note that in order to receive a grant of H-1B status beyond the 6-year limit, a Labor Certification or an I-140 immigrant petition must have been filed at least 365 days prior to the end of the sixth year of H-1B status.)

The application for employment authorization must be made on Form I-765 and accompanied by a \$380 filing fee. The earliest that an eligible applicant can apply is May 25, 2015. The employment authorization document will be issued for a validity period that matches the H-4 spouse's remaining authorized period of admission, which may be as long as three years. Note that an H-4 dependent whose spouse has not been sponsored for permanent residence or has not yet met the milestones described above remains ineligible for employment authorization under the new rule.

*For additional information about any of the topics presented here, please contact us. If you would prefer not to receive future e-mails of this nature, please*

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**Sincerely,**

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