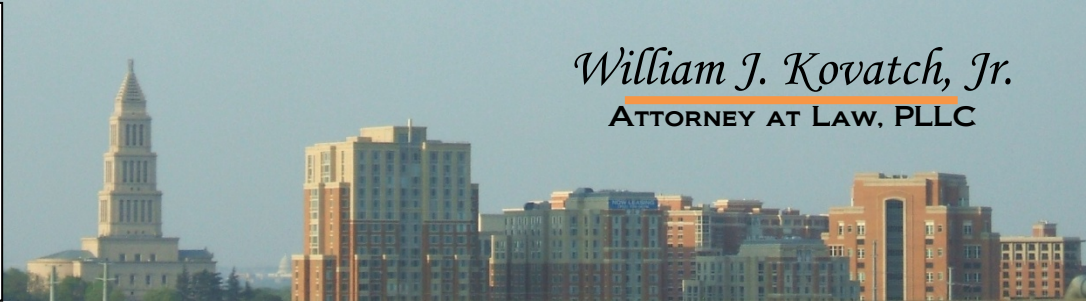


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ATTORNEY AT LAW, PLLC



June 29, 2009

William J. Kovatch, Jr.,
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William J. Kovatch, Jr. is an experienced litigator, with eight years experience litigating cases for the Federal Government. He has litigated complex cases before U.S. courts, NAFTA panels, and the World Trade Organization.

William J. Kovatch, Jr. is a member of the American Immigration Lawyers Association.

This newsletter is meant for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.

IMMIGRATION LAW NEWSLETTER

H-1B Cap Not Met for 2009

As of June 19, 2009, U.S. Citizenship and Immigration Services (USCIS) reported that it had received approximately 44,500 H-1B petitions subject to the annual cap.

An H-1B visa is a non-immigrant visa available for workers in specialty professions.

A specialty profession is one that requires a minimum of a bachelor's degree or its equivalent.

Every fiscal year, beginning October 1 through September 30 of the following year, USCIS makes available 65,000 H-1B visas. An additional 20,000 are available for positions requiring a master's degree or higher.

A worker with an approved H-1B visa can begin working in the United States on the first day of the fiscal year, October 1st. However, USCIS accepts applications for H-1B visas as early as six months before the fiscal year, or April 1st. Once the cap for the year has been reached, USCIS will accept no more H-1B applications for that fiscal year. In the past few years, the H-1B cap has been reached on the first day of filing. It is therefore unusual that two months after the initial filing date, there are still over 20,000 H-1B visas available.

While there are still visas available for specialty professions requiring a bachelor's degree or equivalent, USCIS has already reached its cap of 20,000 petitions for those professions requiring a master's degree or higher. Therefore, should a visa application be submitted for a position requiring a master's degree or higher, it would fall under the 65,000 cap. ■



USCIS Resumes Premium Processing for Certain Employment-Based Immigrant Visas

The U.S. Citizenship and Immigration Services (USCIS) announced that it would resume premium processing for certain employment-based immigrant visas as of June 29, 2009. USCIS suspended premium processing for immigrant visas in 2008, citing concerns with completing the background checks in time.

A petitioner may obtain premium processing by paying an extra \$1,000 fee when filing the visa petition. USCIS will then make a decision on the petition within 15 days, or refund the premium processing fee. There is also a dedicated telephone line and e-mail address to permit petitioners to check on the status of the visa petition.

After USCIS suspended premium processing for immigrant visas last year, it was only available for non-immigrant (or temporary) employment-based visas. As of June 29, 2009, premium processing will now be available for the following employment-based visa categories: EB-1 Aliens with Extraordinary Ability; EB-1 Outstanding Professors and Researchers; EB-2 Members of Professions with Advanced Degrees or Exceptional Ability not seeking a National Interest Waiver; EB-3 Professionals; EB-3 Skilled Workers; and EB-3 Workers other than Skilled Workers and Professionals.

Premium processing will remain unavailable for the following categories: EB-1 Multinational Executives and Managers and EB-2 Members of Professions with Advanced Degrees or Exceptional Ability seeking a National Interest Waiver. ■

Attorney General Holder Reconsiders Prior Decision Concerning Allegations of Ineffective Assistance of Counsel

On June 3, 2009, U.S. Attorney General Eric Holder issued a decision which reconsidered and vacated a decision that had been issued by the prior Attorney General, Michael B. Muksey, concerning the ability of an alien to reopen a removal order based on an allegation of ineffective assistance of counsel. Mukasey had found that there is no constitutional right to counsel in immigration proceedings, and therefore overturned procedures that the Board of Immigration Appeals (“BIA”) had put in place to address such claims in 1988.

Attorney General Holder found that it was not necessary to decide whether there was a constitutional right to counsel in immigration proceedings. He determined that it was appropriate to engage in a thorough consideration of all relevant factors before overturning a rule that had been in place for over twenty years. Based on this decision, the Attorney General directed the Acting Director of the Executive Office for Immigration Review to initiate formal rulemaking procedures to ensure that the public had a full opportunity to provide information and comment on the issue. In the meantime, Attorney General Holder instructed the BIA to reinstate the procedures and standards that had been in place before the Mukasey decision. ■