

## **USCIS RELEASES MEMORANDUM ON H-1B ADMISSION ISSUES**

Recently, the U.S. Citizenship and Immigration Service (USCIS) published a memorandum clarifying three important issues regarding H-1B related admissions.

- 1. Time spent as an H-4 and L-2 dependent does not count against the maximum allowable periods of stay available to principals in H-1B or L-1 status.**

Any time spent in H-4 status will not count against the six-year maximum period of admission applicable to H-1B aliens. Thus, an alien who was previously an H-4 dependent and subsequently becomes an H-1B principal will be entitled to the maximum period of stay applicable to the classification.

Also, in light of the similar statutory provisions set forth for L-1 and L-2 aliens, the memorandum provides that the time an alien has spent in L-2 dependent status will not count against the time available to the alien in L-1A or L-1B status.

- 2. H-1B aliens who qualify for a “7th year extension” under the American Competitiveness in the Twenty-First Century Act (AC21), need not be in H-1B status when requesting an additional period of stay beyond the six year maximum.**

Though AC21 uses the term “extension of stay,” eligibility for the exemption is not restricted solely to requests for extensions of stay while in the United States. Aliens who are eligible for the 7th year extension may be granted an extension of stay regardless of whether they are currently in the United States or abroad and regardless of whether they currently hold H-1B status. Further, in examining eligibility for the 7th year extension, USCIS will focus on whether the alien is eligible for an additional period of admission in H-1B status, rather than whether the alien is currently in H-1B status that is about to expire and seeking an extension of that status in the United States.

- 3. H-1B aliens who have been outside of the U.S. for more than one year may choose to return and complete their six year maximum period of stay or opt for a new six year term.**

There have been instances where an alien who was previously admitted to the United States in H-1B status, but did not exhaust his or her entire period of admission, leaves the U.S. for at least one year. The alien then seeks readmission to the United States in H-1B status for the “remainder” of his or her initial six-year period of maximum admission, rather than seeking a new six-year period of admission. Pending the AC21 regulations, USCIS for now will allow an alien in the situation described above to elect either (1) to be re-admitted for the “remainder” of the initial six-year admission period without being subject to the H-1B cap if previously counted or (2) seek to be admitted as a “new” H-1B alien subject to the H-1B cap.

If you believe you can benefit from one of these new provisions announced in the recent USCIS memo, please contact our office for additional information.