H-1B Visa Program

• The H-1B nonimmigrant classification is for aliens coming to the United States temporarily to perform services:
  – Specialty occupation
  – Department of Defense worker
  – Fashion model
Labor Condition Application (LCA)

• Each petition for an H-1B worker must be accompanied by an LCA in which the DOL certifies:
  – Paid at least the actual or prevailing wage
  – Working conditions will have no adverse effect on U.S. workers
  – No strike or lockout is in progress.
  – The employer has notified the bargaining representative if the job is unionized, or has posted a notice that an LCA was filed.
Numerical Cap

- Statutory numerical limitation of 65,000 per fiscal year except:
  - 20,000 U.S. master’s degree or higher
  - Institutions of higher education or related/affiliated nonprofit entities
  - Nonprofit research organizations or governmental research organizations
  - Petitions filed prior December 31, 2014 for work only in Guam or the Commonwealth of the Northern Marianas Islands
  - Petitions filed on behalf of current H-1B workers who have been counted previously against the cap
Fiscal Year 2011 Filing Period

• The filing period for Fiscal Year (FY) 2011 began on April 1, 2010.

• On December 22, 2010, USCIS received enough H-1B petitions to reach the cap of 20,000 for beneficiaries who hold a masters degree of higher earned from a U.S. institution of higher education.

• On January 26, 2011, USCIS received enough H-1B petitions to reach the regular cap of 65,000.

• In comparison, between April 1 and April 7, 2009 USCIS received approximately
  – 42,000 cap-subject petitions
  – 20,000 U.S. master’s petitions
Recent Developments

• Guidance to the field was issued on January 8, 2010 regarding what factors constitute an “employer-employee” relationship in the H-1B context.

• Administrative Site Visit Verification Program (ASVVP)
Guidance to the Field

• Employer-Employee Memo on January 8, 2010
  – A valid employer-employee relationship must exist for the duration of the requested H-1B validity period.
  – The memo provided guidance to adjudicators on how to determine whether a valid employer-employee relationship will exist between the petitioner and beneficiary, especially in third party employment situations.
ASVVP

• Utilizes physical on-site inspections to determine
  – Existence of employment location
  – If a beneficiary according to the petition is
    • Employed at the location specified
    • Performing the duties as described
    • Paid the salary as indicated

• Initial findings
  – 15,175 H-1B site inspections in FY10
  – Initial results indicate fraud and noncompliance rates of 13%