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On November 20, 2004 Congress passed the Omnibus Appropriations Bill (H.R. 4818), which contains changes to the H-1B and L-1 programs. It is expected that the President will sign the bill within the next two weeks. How might this affect you?

H-1B Visa Reform Act of 2004

There will be *more H-1B visas* and *higher government fees*.

- Each year, **20,000** foreign nationals who have a **master's degree** or higher from a **U.S.** institution of higher education will not be counted toward the annual limit on new H-1B's. *These additional visas will become available 90 days after the President signs the bill.*
- There will be an additional **\$2,000 in filing fees**:
 - 1) a \$1,500 employer fee (\$750 for employers with 25 or fewer full-time employees); and
 - 2) a \$500 fraud prevention and detection fee (one \$500 payment covers the sponsored employee and his/her family).

This provision will take effect on the date the President signs the bill.
- In addition, the new law provides that an H-1B employee must receive 100% of the prevailing wage (current law allows H-1B workers to be paid 95% of the prevailing wage). However, prevailing wage surveys available on-line will have 4 levels rather than the current 2 levels, making it more likely to find a suitable prevailing wage.

L-1 Visa (Intracompany Transferee) Reform Act of 2004

- L-1B status will not be available to an employee who will be stationed primarily at the worksite of another employer (i.e., not the sponsoring employer or one of its subsidiaries, affiliates, or branches, or parent) if:
 - (i) the employee will be controlled and supervised principally by the unaffiliated employer; or

(ii) the placement of the employee at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. *This provision will take effect 180 days after the President signs the bill.*

- Companies with approved L blanket petitions will be able to transfer only employees who have worked for the company abroad for at least *one full year*. Previously, such companies could transfer employees who had been with the company for just six months. *This provision applies to L-1 petitions or L-1 visa applications filed 180 days after the President signs the bill.*

With the almost immediate increase in H-1B fees, we would encourage clients to move forward with current H-1B filings as quickly as possible. In addition, we would encourage clients to promptly identify employees or prospective employees who might be eligible for one of the 20,000 additional visas. While these visas will not become available until 90 days after the President signs the bill, it is likely that there will be an immediate demand for them.

Please do not hesitate to contact a Chin & Curtis attorney if you have any questions about this new legislation.