

IMMIGRATION EDGE

# April 1, 2009 is upon us: Time to file your new H1-B petition



ATTY. DANIEL HANLON

trend of early-exhaustion of H-1B numbers will likely continue this year.

After the sunset of the provisions of the American Competitiveness in the 21st Century Act (AC-21) in 2002, which had raised the annual number of H-1B visas to 195,000, the "H-1B cap" has been reached in each of the past several years leaving thousands of professional workers and employers seeking to hire them out of business. The annual cap of 65,000 is grossly inadequate to accommodate businesses, as has been made obvious over the past few years, with the cap reached within a few days of April 1, 2008, despite the US economy experiencing a deep recession.

Employers seeking to hire an H-1B professional must establish that the prospective employee: (1) has a bachelor's degree; (2) seeks to come to the United States to perform services in a position requiring a bachelor's degree or higher for entry into the position; and that (3) the degree is directly related to the nonimmigrant's field of endeavor. The US employer or sponsor must demonstrate a need for a worker and attest that insufficient domestic labor is available to fill the need. Of course, the US employer must also establish his ability to pay the "prevailing wage" for the position.

If the intended worker is overseas, he may obtain an H-1B visa from the US Embassy upon USCIS approval of a Petition in the US. A nonimmigrant visitor in the United

States, for instance on a B-2 visa, may apply for "change of status" from visitor to H-1B professional worker. The new status will be indicated on the person's I-94, but is not a travel document. In order to travel and reenter the United States in H-1B status, a visa must be obtained at a US Embassy or consulate abroad.

The number and types of occupations that will qualify people for classification as H-1B professional workers are constantly expanding. With the development of so many new highly specialized occupations in the high-tech industries, more and more H-1Bs are necessary to fill the demand, and to maintain the status quo for more traditional occupations such as accountants and engineers.

Although certain categories of workers are exempt from the H-1B cap, there is no doubt that the 65,000 H-1B visas available for most jobs in "specialty occupations" will be used up by mid-Summer. With that in mind, employers desiring to hire professional workers under the H-1B category would do well to file their Petitions early, and file them properly, or risk being shut-out until April 1, 2010 when the quota reopens for FY 2011.

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BARRISTER'S CORNER



ATTY. KENNETH URSUA REYES

# Tax consequences of divorce on non-custodian parents

either (i) divorced, (ii) legally separated, (iii) separated under a written separation agreement, or (iv) living apart at all times during the last six months of the calendar year. The child must be in the custody of one or both of the child's parents for more than one-half of the calendar year. IRC § 152(e) (1)(A) & (B)

To shift the exemption and child tax credit to the noncustodial parent, the custodial parent must release or waive his or her claim to the exemption for the year by executing IRS Form 8332. IRC § 152(e) (2). The custodial parent can waive this right to claim the children as dependents and let the non custodial parent claim them by executing IRS Form 8332 and filing it with his or her return.

Certain Tax Court cases held that the waiver is effective even if the Form 8332 was not filled out in detail. In *Bramante* (T.C. Memo 2003-228), the custodial parent and agreed to waive her right to exemptions on Form 8332. The custodial parent realized that as her income increased, the value of the exemptions increased. The custodial parent discovered that her Social Security number was missing on the form and that the noncustodial parent, had dated the form in his handwriting. The tax court still upheld the waiver as effective despite the missing details from Form 8332.

In *Boltinghouse*, the IRS argued that missing details in the separation agreement defeated the waiver (T.C. Memo 2003-134). In this case, the parties executed a separation agreement allowing the non custodial parent to claim one of his children, but the non custodial parent did not file a Form

8332. As a result, the court had to decide whether the agreement conformed in substance to Form 8332. The IRS contended that the agreement was not in substance a Form 8332 because it did not reflect the years the exemptions were to be waived and it did not provide Social Security numbers for the parents. Although the IRS pointed to some cases in which the Tax Court had rejected waivers that were ambiguous as to the applicable years, the Tax Court said that it was clear that this agreement applied to the years the parents began filing separate returns. As in *Bramante*, lack of Social Security numbers was not considered a serious defect by the Tax Court.

The custodial parent can waive the dependent exemption each year or for a number of years. The non custodial parent should file form 8332 with his or her tax return in order to be entitled to the exemption. To avoid any confusion and tax issues with the IRS, the parties should attempt to agree or resolve in court the issue of who will claim the dependency exemption of the children as part of the divorce judgment. Parties should seek the assistance of an experienced attorney to weed through complex family law issues.

**Atty. Kenneth Ursua Reyes was President of the Philippine American Bar Association. He is a member of both the Family law section and Immigration law section of the Los Angeles County Bar Association. He has extensive CPA experience prior to law practice. LAW OFFICES OF KENNETH REYES, P.C. is located at 3699 Wilshire Blvd., Suite 700, Los Angeles, CA, 90010. Tel. (213) 388-1611 or e-mail kureyeslaw@aol.com. Visit website Kenreyeslaw.com. (Advertising Supplement)**

DEBT RELIEF



ATTY. LAWRENCE YANG

# Home affordability and stability plan

homeowners cannot refinance even if they have good credit because their houses cannot qualify for refinancing with the current drop in market values.

For people with good credit but with houses that cannot qualify for refinancing, the plan proposes to allow loans to be made up to 105% of the property's value. I am not sure how this will actually work out. But let's consider some examples. If the house is worth \$400,000 but the outstanding mortgage is \$420,000, there is no question that a homeowner with good credit will be able to get a new loan to refinance their old mortgage of \$420,000 because he is completely within guideline. What is good credit? I presume someone with at least 730 credit score would qualify. Maybe even someone with 700 credit score would qualify because normally 700 is a good score. But someone with a 680 score may not qualify. What if the balance of the loan was \$500,000, will the homeowner with good credit qualify for a refinance loan of \$420,000? It would seem so.

The purpose of the stability plan is to bring mortgages in line with home values. Thus, the homeowner with good credit would qualify form a refinance of \$420,000. What happens to the difference between \$420,000 and \$500,000? The difference of \$80,000 would have to be forgiven by the creditor. The administration estimates that there are between 7 million to 9 million in this category. Homeowners in this category will realize a reduction in mortgage payments attributable only to a reduction

of interest rates, smaller loan because of reduction of balance of the loan to the current fair market value of the property, and maybe a longer-term loan. In this example, if the original loan is 6.5 % fixed for 15 years with a loan balance of \$500,000, the new mortgage payment will be lower because the refinance loan will be \$420,000, with \$80,000 forgiven, and the interest rate will be between 4% to 5%, and fixed for 30 years. The combination of all these factors will result in a lower monthly payment. Fannie Mae and Freddie Mac will provide the refinance loan. However, the charters of Fannie Mae and Freddie Mac prohibit them from acquiring loans with loan to values in excess of 80% unless the homeowner has mortgage insurance. To circumvent this, the refinance will be called modifications.

What if your credit score is bad and you actually cannot afford your current mortgage payment and cannot sell your home, you are part of the Administration's estimate of 4 million homeowners that it also plan to help out.

We will discuss the Administration's plan for you in the next week's article.

If you need debt relief, contact my office, I will analyze your case personally.

**Lawrence Bautista Yang specializes in bankruptcy, business, real estate and civil litigation and has successfully represented more than five thousand clients in California. Please call Angie, Barbara or Jess at (626) 284-1142 for an appointment at 1000 S. Fremont Ave., Bldg. A-1 Suite 1125 Unit 58, Alhambra, CA 91803. (Advertising Supplement)**

PAGE B1

# The RN contract...

Service as proof that the RN never intended to work for the employer. This will be the basis for revocation of the green card.

RNs in this situation must document the circumstances that forced them to leave. They must show why remaining with the employer would have been tantamount to slavery or indentured servitude. The US Constitution prohibits slavery and indentured servitude and because in many cases the sponsoring employer breaches the contract, the employee is not liable for any damages. This core constitutional value is the basis for providing relief to those forced to leave their sponsors. RNs trapped in an

unconscionable contract should seek immediate legal assistance in order to preserve their rights, their dignity, and their immigration future.

**Atty. Reeves has represented clients in numerous landmark immigration cases that have set new policies regarding INS action and immigrants' rights. His offices are located in Pasadena, San Francisco, Las Vegas and Makati City. Telephone: (800) 795-8009 E-mail: immigration@rreeves.com Website: www.rreeves.com. (Advertising Supplement)**

The analysis and suggestions offered in this column do not create a lawyer-client relationship and are not a substitute for the personalized representation that is essential to every case.

PAGE B2

# Is there an alternative to filing...

however, where you have no income and no assets and you don't expect this situation to change anytime soon, you may be considered "judgment proof". What that means is that even if your creditors sue you and get a judgment, the judgment is worthless because it is uncollectible. Be aware, however, that if your financial condition does improve in the future, then you

sure a lot of questions are going through your mind at this time. For a free evaluation of your case, please call our office at Toll-Free 1-866-477-7772 to schedule a free consultation. Let us help you. We have offices in Glendale, Cerritos and West Covina.

**None of the information herein is intended to give legal advice for any specific situation. Atty. Ray Bulaon has successfully helped over 4,000 clients in getting out of debt. For a free attorney evaluation of your situation, please call Ray Bulaon Law Offices at TOLL FREE 1-866-477-7772. (Advertising Supplement)**

PAGE B2

is to be on the receiving end of rejection. He slowly pined away, losing his youth and beauty and withering away on the same spot by the pool's edge with Echo still hovering over him and repeating his poignant last word, "Alas!" as he lay dying.

As the woodland creatures prepared to bury his body, Narcissus' body was nowhere to be found and in its place, stood a flower, bending over the pool, as though admiring itself. Gardeners know this flower as narcissus.

Hence, we call those who ex-

# Unrequited love

hibit the same folly these days as narcissistic. The irony of it is that others clearly see it for what it is but the afflicted individual is blind to this egocentric flaw in himself, thinking the world revolves around him. In today's world, there's opportunity to cash in on this human flaw and use vanity and self-image as hot buttons to sell their wares: beauty products and services, diet pills and machines and illusions of power and beauty, with remarkable success. Self-improvement is great but only if it comes from the inside out.

Pray that both the "once young" and the young ones don't fall prey to the trappings of extreme self-absorption. Self-love taken to extreme, is something that might account for much of the social problems affluent societies with only one or two self-absorbed children per family, experience and suffer from today.

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# ATTENTION NURSES AND OTHER HOSPITAL OR HEALTH CARE EMPLOYEES!

- ▶ Are you paid different hourly rates for the same job, depending on whether you are assigned an 8-hour shift or a 12-hour shift?
- ▶ Are you paid a fixed salary and work more than 8 hrs a day or more than 40 hrs a week?
- ▶ When you work more than 8 hours a day or more than 40 hours a week, are you paid only your regular hourly rate and not the overtime premium rate?
- ▶ Are you unable to take a meal break even though you work more than five hours in a day?
- ▶ Are you classified at work as an independent contractor without employee benefits although you are supervised by your employer?

If you answered YES to any of the questions above, you may be entitled to additional compensation. We can help you. Contact the

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