

Immigration Alert: USCIS Announces Fiscal Year 2010 H-1B Cap Reached

12/22/2009

On December 22, 2009, U.S. Citizenship and Immigration Services (USCIS) announced that, as of December 21st, it had received more than enough H-1B petitions to meet the numerical limit for Fiscal Year 2010 cap-subject H-1B visas. In addition, USCIS announced that they had also received more than 20,000 "U.S. Masters" H-1B petitions filed on behalf of individuals with U.S. advanced degrees. No more cap-subject H-1B petitions will be accepted by USCIS.

USCIS indicates it will now begin executing the computer-generated random selection process (lottery) for all cap-subject petitions received on December 21st, the date USCIS calculates the cap was reached (petitions received prior to December 21st will receive a receipt and will be adjudicated by USCIS). First, USCIS will determine which U.S. Masters cases will be randomly selected toward the remainder of the 20,000 limit. Once that is determined, the remainder of the U.S. Masters petitions will be added to the pool of general H-1B cap petitions which were received on December 21, 2009, and then USCIS will execute the second random selection process to determine which cases are accepted toward the remainder of the more general 65,000 H-1B visas. Only those cases which win the lottery will receive a receipt from USCIS. All other cases will be returned along with the filing fees.

Any cap-subject H-1B petitions received by USCIS after December 21st will be returned and associated fees remitted.

We remind our clients that FY2011 H-1B visa petitions may be filed on April 1, 2010, requesting an October 1, 2010 start date. This is approximately four months from now, and so employers who have missed the FY2010 cap should begin planning now for an April 1, 2010 filing date requesting an FY2011 H-1B.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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