

NEW MEXICO IMMIGRATION LAWYER BLOG

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H-1B Cap for 2010 Reached: Deadline for Applications Passed December 21, 2009

U.S. Citizenship and Immigration Services (USCIS) cutoff date for H-1B petitions was December 21, 2009. The December 21, 2009 date was the final receipt date for H-1B specialty occupation petitions with request for 2010 employment start dates.

The December 21, 2009 date is the date that the petitions must have been received. Petitions received later than that date will not be accepted despite earlier post dates. This date is the date on which USCIS projects that it had received enough cap-subject petitions to reach the 65,000 cap for 2010.

The USCIS uses computer driven random selection process to all cap subject petitions received prior to the deadline. This random selection process is used to select petitions up to the 65,000 cap limits. In the event, that a petition is not chosen through the random selection process, the petition will be rejected and the petition fee will be returned to the petitioner.

There are exemptions for certain advanced degree speciality occupations. The USCIS has received more than 20,000 advance degree H-1B cap exempt petitions. In addition, those petitions filed on behalf of current H-1B workers that were included in prior year's cap limits are not counted against the 2010 cap. As such, petitions for the following will continue to be processed by USCIS without any impact on the cap:

- Petitions to extend the time a current H-1B worker may remain in the United States.
- Petitions to modify the terms of employment for current H-1B workers.
- Petitions for a change of employer for current H-1B workers.
- Petitions to for concurrent employment of H-1B workers in a second H-1B position

The H-1B program provides an employment based visa preferences for the employment of foreign workers in certain specialty occupations. Specialty occupations are defined as those requiring theoretical and practical application of highly specialized knowledge in such fields as medicine and health, education, law, accounting, business specialties, engineering, mathematics, physical sciences, social sciences, biotechnology, theology, architecture and the arts.

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