

Immigration Alert: USCIS Still Accepting H-1B Petitions

4/12/2010

U.S. Citizenship and Immigration Services (USCIS) has announced that H-1B petitions are still being accepted under Fiscal Year 2011's annual "cap" on new petitions. As we have informed you in the past, Congress has placed a numerical "cap," or limit, on H-1B visas. For FY 2011, the limit is 65,000, with an additional 20,000 available for individuals who have earned a U.S. master's degree or higher. The first day that employers were allowed to file FY 2011 H-1B petitions (seeking a start date of October 1, 2010) was April 1, 2010. As of April 9, 2010, USCIS had received approximately 13,500 H-1B petitions counting toward the 65,000 cap and approximately 5,600 for the U.S. master's degree quota. It is likely that the initial filings decreased this year not only due to the economic downturn, but also due to the fact that H-1B visas were available for FY 2010 all the way through December 2010.

While these numbers indicate that we still have a long way to go before we hit this year's cap, there is still no way to predict when the quota will be exhausted. Therefore, we recommend that employers contact us as soon as possible to get started on these filings. This is especially important given the modest increase in hiring that many of our employers are experiencing, as well as the fact that the Department of Labor now takes up to seven days to certify a Labor Condition Application (LCA), which is a necessary step prior to filing an H-1B petition.

When USCIS determines that it has reached the necessary number of petitions to meet the cap, it will issue an update and notify the public of the "final receipt date." USCIS will then likely conduct a random lottery to select the number of petitions required to reach the numerical limit from all the petitions received on that final receipt date. All other cases (those rejected in the lottery and/or received after the final receipt date) will be rejected.

We will continue to keep you apprised of the status of the H-1B quota as updates are released.

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

[Susan J. Cohen](#)

Chair, Immigration Section

(617) 348-4468

SCohen@mintz.com

Jeffrey W. Goldman

Manager, Immigration Section

(617) 348-3025

JGoldman@mintz.com

Reena I. Thadhani

(617) 348-3091

RThadhani@mintz.com

Molly Carey

(617) 348-4461

MCarey@mintz.com

William L. Coffman

(617) 348-1890

WCoffman@mintz.com

Brian J. Coughlin

(617) 348-1685

BJCoughlin@mintz.com

Lorne M. Fienberg

(617) 348-3010

LFienberg@mintz.com

Marisa C. Howe

(617) 348-1761

MHowe@mintz.com

Bethany S. Mandell

(617) 348-4403

BSMandell@mintz.com

Timothy P. Rempe

(617) 348-1621

TRempe@mintz.com