

## Practice Areas

### BUSINESS

L-1 Visas

H-1B

H-1B Transfers

Visas

TN Visas (NAFTA)

Special Visas for Other Countries:

- Australia
- Chile / SingaporeE-1

E-1 Visas

E-2 Visas

PERM Labor Certification

### HOSPITALS / HEALTHCARE

H-1C Visas

H-1B Visas for Doctors

### FAMILY

Spouse / Fiancée Visas

Permanent Residence for Family  
within U.S.

Naturalization /Citizenship

### AMNESTY

## Interpretation of Visa Cap Exemptions Could Change

**Posted:** March 29th, 2011

On March 18, 2011, the U.S. Citizenship and Immigration Services (the "USCIS") announced that it would review its current policy on H-1B cap exemptions for non-profit entities (such as hospitals) that are affiliated with institutions of higher education (such as universities or colleges).

The H-1B is a visa available to foreigners working in the U.S. in certain specialty occupations. By statute, H-1B visas are subject to an annual numerical limit or cap of 65,000 visas each year. The first 20,000 petitions for such visas made on behalf of individuals with U.S. master's or doctoral degrees are exempt from and not counted against the cap.

It was noted in a March 12 posting on this blog that Sen. John Kerry and Sen. Scott Brown of Massachusetts had made a formal inquiry into whether the USCIS had changed its interpretation of when non-profit entities are exempt from cap limits on H-1B work visas in light of recent rulings adverse to certain non-profit employers.

The recent announcement by the USCIS would appear to be good news for non-profit employers, at least temporarily, in that it gives deference to prior favorable H-1B determinations made by USCIS since June 6, 2006 (absent any significant change in circumstances or clear error in prior adjudication).

A burden will be put on non-profit employers to demonstrate any prior favorable determination, but this can be easily done with a copy of the previously approved cap-exempt petition and the previously issued approval notice on Form I-797.

The USCIS emphasized that these measures will only remain in place on an interim basis while a review of existing policy is underway.

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If you are an agent for a non-profit employer who is responsible for seeking out H-1B visas, do not hesitate to contact our offices at (847)564-0712 if you need assistance. Feel free to visit the pertinent section of [our Website](#) as well.