

### Fiscal Year 2012 H-1B Cap Reached

November 28, 2011

U.S. Citizenship and Immigration Services (USCIS) announced that the H-1B cap was reached and that all cap-subject H-1B petitions received after November 22, 2011 will be rejected. H-1B petitions filed for those who have previously held H-1B status in the last six years, including requests for an extension of stay or a change of employer, are not subject to the cap. Petitions for those employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or governmental research organization, are also exempt from the annual cap. H-1B1 visa numbers are still available for nationals of Chile and Singapore.

USCIS will begin accepting H-1B petitions for FY2013 on April 2, 2012 for employment commencing on October 1, 2012 or later.

#### What Should Employers Do?

- Employers should immediately inform their recruiters that candidates who will require H-1B sponsorship and are subject to the cap cannot commence employment in H-1B status until October 1, 2012, although other visa options may be available.
- Employers should plan to file H-1B petitions to be received by USCIS on or after April 2, 2012 on behalf of the following foreign nationals whom they may wish to retain:
  - Recent graduates employed pursuant to F-1 optional practical training to ensure continued employment eligibility after expiration of their employment authorization documents.
  - Employees in the United States working in another nonimmigrant status and otherwise ineligible for continued authorization after October 1, 2012.
  - Candidates abroad subject to the annual H-1B limit and ineligible for another type of work-authorized status in the United States.

For more information, or if you have any questions regarding the issues discussed in this Immigration Alert, please contact any of the following attorneys:

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**Now Available: AILA's Focus on Immigration Practice Under AC21**

Written by Eleanor Pelta and A. James Vázquez-Azpiri, *AILA's Focus on Immigration Practice Under AC21* provides invaluable insight on the effect AC21 has had on the H-1B visa category. For more information, please visit [www.ailapubs.org/ac21.html](http://www.ailapubs.org/ac21.html) or call 1.800.982.2939 to order a copy.

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