

ALERTS AND UPDATES

U.S. Citizenship and Immigration Services Already Nearing 2011 Cap for H-1B Petitions

January 11, 2011

The U.S. Citizenship and Immigration Services (USCIS) has [announced](#) that as of December 31, 2010, it has received 57,300 H-1B petitions out of the available 65,000 petitions for fiscal year 2011. In addition, USCIS announced that it has received more than 20,000 H-1B petitions on behalf of persons exempt from the cap under the H-1B master's-degree exemption. It is anticipated that the USCIS will reach the limit for cap-subject petitions soon, and all employers who wish to file new H-1B petitions should act promptly to do so.

H-1B petition extensions or petitions filed for a change of employer are not subject to the cap, unless the current H-1B employer was cap-exempt. H-1B petitions filed on behalf of individuals who have held H-1B status at any time during the last six years are also not subject to the cap, unless the H-1B employer was cap-exempt. Petitions filed by an institution of higher education or a related or affiliated nonprofit entity, or by a nonprofit research organization or governmental research organization, are also exempt from the annual cap.

It is important to note that not all H-1B nonimmigrants are subject to the cap. H-1B1 visa numbers for nationals of Chile and Singapore, under free trade agreements with those countries, are unlikely to be reached anytime soon. Up to 6,800 visas may be set aside from the cap of 65,000 during each fiscal year for the H-1B1 program under the terms of the legislation implementing the U.S.–Chile and U.S.–Singapore free trade agreements.

USCIS will begin accepting H-1B petitions for fiscal year 2012 on April 1, 2011. The start date for fiscal year 2011 petitions can be no earlier than October 1, 2011. Employers may want to consider beginning the process for cap-subject fiscal year 2012 H-1B petitions as early as possible.

For Further Information

If you have any questions about this *Alert*, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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