

## 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

## Teaching Hospitals Still Exempt from H-1B Caps

**Posted:** March 12th, 2011

A liaison for the American Immigration Lawyers Association has reported that the U.S. Citizenship and Immigration Services (the “USCIS”) will be sending out a clarification that teaching hospitals affiliated with a medical school are still considered exempt from the H-1B cap, despite a recent decision by the USCIS Administrative Appeals Office (the “AAO”) rejecting an exemption claim by a non-profit acute care facility affiliated with a state college.

In that case, decided in December, the AAO found that the H-1B application beneficiary (a medical technologist) was not qualified for an exemption because she would be employed solely at the facilities of the acute care facility petitioner rather than at the site of or jointly with the state college. The AAO stated that “the *locus actus*, or place of performance, is paramount in determining whether a petitioner qualifies for an exemption from the H-1B cap as [part of] an institution of higher education.”

This decision and a few other recent “requests for evidence” by the USCIS on petitions from hospitals affiliated with teaching institutions have caused Senators John Kerry and Scott Brown of Massachusetts to send letters to Secretary of Homeland Security Janet Napolitano, asking for clarification about any changes in interpretation on USCIS views on “affiliation” exemptions for teaching hospitals.

While the USCIS is expected to affirm that teaching hospitals can still qualify for exemption from the H-1B cap, it is likely that the USCIS will also clarify that petitioners must still meet each of the tests for “affiliation” with an institute of higher education and for the site of employment.

Title 8 CFR Sec. 214.2(h)(19)(iii)(B) defines what an affiliated non-profit entity is for purposes of H-1B cap exemption:

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“A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative or subsidiary.”

If you are an employer or agent of a health care employer responsible for compliance with H-1B immigration rules, please do not hesitate to contact our office for help at (847)564-0712. You are also welcome to visit the pertinent section of [our Website](#) for additional information about our services.