

IN THIS ISSUE:

Volume 5.3

4 April 2008

U.S.A: Breaking news from spring AILA conference indicates that cap numbers have been reached.

THE AMERICAS: USA

Unofficial Confirmation from USCIS Indicates both Regular and Advanced U.S. Degree Caps Met

By Ian R. MacDonald* & Chadwick M. Graham**

April 4, 2008 – This morning at the AILA 2008 Spring CLE Conference in Washington, D.C., Michael Aytes, Director of Domestic Operations for the U.S. Citizenship and Immigration Service (USCIS), announced that the annual H-1B numbers for both the regular and advanced U.S. degree caps have already been used up. Unconfirmed reports indicate that there could be as many as 300,000 – 500,000 cases for this year's lottery.

This is clearly bad news for cases filed under the regular cap. According to a previous USCIS announcement on H-1B processing changes for this year, the Service will first conduct a random lottery of cases filed under the advanced U.S. degree cap. The unsuccessful cases from the advanced U.S. degree lottery will be added to the regular H-1B cap lottery, further diluting the chances of selection for those with Bachelor's or foreign degrees.

Furthermore, according to the aforementioned processing changes, USCIS plans to accept cases through Monday, April 7, 2008, so even more cases will be added to the already enormous amount that has been received. Last year, the chances of selection in the random lottery were around 50%. It appears that chances of selection this year will be much lower. Practitioners and their clients will need to develop alternative strategies to meet U.S. staffing needs since there will be no places whatsoever available for most petitioners filing for new workers in the H-1B classification in FY2009.

* Ian R. MacDonald is a shareholder working in Littler Mendelson's corporate business migration law practice. He is resident in Atlanta (imacdonald@littlerglobal.com).

** Chadwick M. Graham is an associate working in Littler Mendelson's corporate business migration law practice. He is resident in Phoenix (cgraham@littlerglobal.com).