

### H-1B Filing Season Is Here

*Now is the time for employers to assess their FY 2013 H-1B needs and to get petitions ready.*

**February 24, 2012**

On Monday, April 2, 2012, U.S. Citizenship and Immigration Services (USCIS) will begin accepting cap-subject H-1B petitions for fiscal year 2013, with an employment start date of October 1, 2012. We recommend that all H-1B petitions subject to the FY 2013 cap be sent to USCIS on Friday, March 30 for receipt by USCIS on Monday, April 2. Any H-1B petitions subject to the cap received by USCIS before April 1 will be rejected.

There is a quota of 65,000 cap-subject H-1B visas each fiscal year. A separate allotment of 20,000 H-1B visas is available to foreign nationals holding a master's degree or other advanced degree from a U.S. institution of higher education. Demand for H-1B visas has fluctuated in past years, as shown in the table below, with the cap being reached on the first few days of filing in 2007 and 2008. While it is not possible to predict H-1B visa demand for this year, employers are advised to submit their petitions as early as possible.

<b>Year</b>	<b>H1B Cap Numbers*</b>	<b>Date H1B Cap Reached</b>
2003 (FY 2004 cap)	65,000	October 1, 2003
2004 (FY 2005 cap)	65,000	October 1, 2004
2005 (FY 2006 cap)	85,000	August 10, 2005
2006 (FY 2007 cap)	85,000	May 26, 2006
2007 (FY 2008 cap)	85,000	April 3, 2007
2008 (FY 2009 cap)	85,000	April 7, 2008
2009 (FY 2010 cap)	85,000	December 21, 2009
2010 (FY 2011 cap)	85,000	January 26, 2011
2011 (FY 2012 cap)	85,000	November 22, 2011
2012 (FY 2013 cap)	85,000	To be determined

\* By law, 6,800 of the 65,000 H-1B visas are allocated as H-1B1 visas to nationals of Chile and Singapore.

Only petitions filed on behalf of foreign nationals who have not previously been counted against the H-1B cap in the last six years are subject to this year's H-1B cap. Foreign nationals employed by institutions of higher education, nonprofit research organizations, or governmental research organizations are not subject to the cap.

## How This Affects You

Employers should review the immigration status of their current and potential foreign national employees and identify any individuals for whom H-1B status would be beneficial. These would include foreign nationals in TN and E status whom the employer may want to sponsor for permanent residence, recent graduates employed in F-1 status, candidates abroad who are subject to the annual H-1B cap, and candidates in another nonimmigrant status who are working for a different employer and would require an H-1B visa to change jobs.

We recommend that all employers that wish to file H-1B petitions that will be subject to the FY 2013 cap contact us as soon as possible so that we may begin preparing these petitions.

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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