

APRIL 7, 2014 BULLETIN TO ALL IMMIGRATION CLIENTS

## USCIS Announces FY 2015 H-1B Visa Cap Reached

On April 7, the U.S. Citizenship and Immigration Services (USCIS) announced that it has received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2015. USCIS has also received more than the limit of 20,000 H-1B petitions filed under the U.S. advanced degree exemption.

As noted in prior client bulletins, Congress has mandated that USCIS approve only 65,000 petitions for new H-1B employment in FY 2015, i.e., October 1, 2014, through September 30, 2015. Of these 65,000 visas, 6,800 are reserved for the Chile/Singapore H-1B program, thereby leaving only 58,200 visas for all other nationalities each fiscal year.

By law, if, on the first day that employers can petition for new H-1B visas, USCIS receives more petitions than there are slots available, then it must accept applications for the first full week of the filing "season" and then conduct a random lottery among all of those cases. As noted above, USCIS has confirmed that it has indeed received the sufficient number of petitions.

USCIS will now complete initial intake for all filings received during the filing period and will conduct a random selection process/lottery. A computer-generated process will randomly select the number of petitions needed to meet the caps of 65,000 visas for the general category and 20,000 under the advanced degree exemption. USCIS will reject and return filing fees for all cap-subject petitions that are not selected, unless found to be a duplicate filing. The agency will conduct the selection process for the advanced degree exemption first. All advanced degree petitions not selected will become part of the random selection process for the 65,000 limit.

Because of the high number of petitions filed, USCIS is not yet able to announce the date on which it will conduct the random selection process. In past years, it has taken USCIS at least several weeks to determine exactly how many cases were received.

If we receive an unselected case, we will contact you immediately to review the situation and discuss any options that may exist. Please remember that there may be other visa alternatives to filing an H-1B petition. As we have done in the past when a case is caught by the cap, we will work with you to try to develop and implement a solution that will permit the affected employee to legally remain employed or begin employment in the United States.

Also, and as in past years when we have had this situation, there now exist various immigration legislation/proposals which include provisions to increase the annual H-1B cap. Although not certain, there is a possibility that, based on such legislation and the current climate in Congress, we will at least get some H-1B relief during this calendar year. We encourage you to contact your Senators and Representative to urge them to support H-1B immigration reform/relief.

Please note that the cap applies only to petitions for new H-1B visas, including petitions to change/convert from F-1 or L-1 to H-1B status. **The following are not subject to the cap**, i.e., the CIS will continue to accept H-1B petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States;
- Change the terms of employment for current H-1B workers;
- Allow current H-1B workers to change employers (unless the worker seeks to change from “cap-exempt” H-1B employment to non-cap-exempt H-1B employment); and
- Allow current H-1B workers to work concurrently in a second H-1B position.

**The CIS will also continue to accept petitions for new H-1B employment where the petitioner/employer is not subject to the annual cap.** To qualify as a “cap exempt” petitioner, the employer must be: (i) an institution of higher education or a related or affiliated nonprofit entity; (ii) a nonprofit research organization; or (iii) a governmental research organization.

Last, petitioners may resubmit first-time employment H-1B petitions when H-1B visas become available for the 2016 fiscal year (FY 2016). The earliest date a petitioner may file a petition requesting FY 2016 H-1B employment (with an employment start date of October 1, 2015) is April 1, 2015.

Please contact any member of the Cohen & Grigsby Immigration Department at 412.297.4900 if you have any questions regarding this information. To receive future bulletins by e-mail, please send an e-mail to [info@cohenlaw.com](mailto:info@cohenlaw.com).

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