

BURR ALERT

H-1B Visas for Foreign Professionals Are No Longer Available for FY 2014

Employers seeking to hire foreign professionals may be out of luck this year. On April 5, 2013, United States Citizenship and Immigration Services (USCIS) announced that the statutory cap on H-1B petitions for FY 2014 has been reached, just five days after the application process opened. Any employer who did not submit an H-1B petition on behalf of a professional foreign worker on or before April 5 will likely not get another chance to petition for that employee until next year. USCIS announced Monday that it used a random lottery system to select petitions from among the 124,000 submitted for processing. As the statutory caps are 65,000 for standard petitions and 20,000 for professionals who hold a U.S. Master's Degree, the numbers indicate that approximately 1 out of 4 timely submitted petitions will be rejected.

The H-1B Process for FY 2014 Shows a Marked Increase in Petitions

Each year on April 1, USCIS begins accepting H-1B petitions for visas that will become effective the following October. By regulation, when USCIS determines that it has received enough petitions to reach the cap, it stops accepting petitions as of the end of that day, which is known as the "final receipt day." If the final receipt date falls within the first 5 days of filing, USCIS institutes the lottery. This year, USCIS had already received more than 85,000 petitions for 2014 H-1B visas at the time it made its announcement on April 5th – by the end of that final receipt day, submitted petitions numbered approximately 124,000. Two days later, on April 7, USCIS used a random selection process to determine which petitions would be accepted and which would not. Employers will soon receive notification of whether their petitions have been accepted for processing, or rejected and returned.

USCIS has not instituted a lottery since 2008, and in the intervening years, the cap has not been reached for several months or more after the April 1 opening date. Although the flood of petitions this year may signal good news for the economy, it is troubling for employers who timely submitted petitions and are now awaiting the results of the lottery to determine whether key employees will be authorized to work for them this year.

Congressional Proposals May Assist Employers by Raising the H-1B Cap

As the debate over comprehensive immigration reform continues, Congress has proposed measures specifically to reform the H-1B process. One such proposal, the Immigration Innovation Act of 2013 (called the I-Squared, or I², Act), would increase the standard H-1B cap from 65,000 to 115,000. Additionally, it establishes a market-based H-1B escalator, which adjusts the cap up or down based on how quickly it is reached, with a ceiling set at 300,000. This proposal would also eliminate the cap on professionals holding a U.S. advanced degree. Exemptions from the cap currently in place, such as exemptions for research and non-profit institutions, will remain intact under this proposal. The I² bill, unlike other proposals, does not mandate a labor market test, by which an employer would be required to prove a shortage of U.S. workers for the position through regulatory recruiting processes before being able to petition for a foreign professional.

For assistance with evaluating available interim solutions to the H-1B problem or for more information, contact:

[Anton Mertens](#) in Atlanta at 404-685-4267 or amertens@burr.com

[Anna Scully](#) in Mobile at 251-345-8205 or ascully@burr.com

or your Burr & Forman attorney with whom you regularly work.

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