

H-1B Filing Alert - Prepare Early for the H-1B Lottery

The U.S. Citizenship and Immigration Services (USCIS) will begin to accept H-1B visa petitions for FY 2010 on April 1, 2009, for an October 1, 2009 start date. There is an annual quota of 65,000, with an additional 20,000 H-1Bs for applicants graduating with a Master's or higher degree from a U.S. university. April 1, 2009 is the first day petitions may be received for an October 1, 2009 start date. In FY 2009, USCIS accepted applications during the first five business days. USCIS has not yet made an announcement on how long the filing period will be for FY 2009.

We expect USCIS to reach the cap quickly, most likely during the designated filing period. Last year, USCIS received nearly 163,000 H-1B petitions during the filing period ending on April 7, 2008. More than 31,200 of those petitions were for the 20,000 advanced degree cap. If this quota is missed, professional workers will have to wait until April 1, 2010 to apply, but the H-1B work authorization would not commence until October 1, 2010.

We encourage all interested employers and foreign nationals to contact us immediately to either identify potential H-1B candidates and/or prepare H-1B paperwork for timely filing before the quota is reached. We recommend that all employers file their H-1B petition no later than Wednesday, April 1, 2009 (or during the designated filing period) to ensure that they capture one of the limited quota visas.

Other H-1B News - Cap-Gap Relief for Some F-1 OPT Students:

In April 2008, USCIS provided what is known as H-1B "Cap-gap" relief. Prior to this, F-1 students often had a "gap" between the start date of an H-1B and the end date of their OPT employment authorization. The 60-day grace period at the end of F-1 OPT allows an F-1 student to remain in the United States, but does not permit employment during that time. As a result of new provisions, USCIS is authorized to extend the status of F-1 students caught in a "cap gap" between the end of the student's OPT and the start date of an approved H-1B petition. The rule automatically extends both the F-1 status and OPT employment authorization of an F-1 student who is the beneficiary of a timely-filed H-1B petition that has been granted by, or remains pending with USCIS. This means that if the H-1B petition filed on behalf of the student is selected as a "cap case," the F-1 student may remain in the United States and continue working until the October 1 start date indicated on the H-1B petition. For others not selected for an H-1B, the automatic extension of status and OPT employment authorization ends when the F-1 student receives notification of the denial or rejection of the petition. At this time, the F-1 student has the standard 60-day grace period (from notification of the denial or rejection of the petition) before they have to leave the United States.

Proposed Changes to the H-1B program

USCIS reportedly plans to issue a rule in the spring or summer of 2009 to streamline the H-1B paperwork required to participate in the fiscal year 2011 lottery. The proposed rule would impose a "pre-registration" system, and if selected for the H-1B lottery, would require the employer to submit the full H-1B petition upon selection. That system will not be in place for this April's H-1B rush, however.

Cap-Exempt Organizations - H-1B Cap Does Not Apply

The H-1B cap does not apply to institutions of higher education, entities related to or affiliated with institutions of higher education, non-profit research organizations and government research organizations. For these cap-exempt organizations, it is still possible to obtain H-1B status with an immediate start date for new employees.

Other individuals who are not affected by the H-1B cap include those who currently maintain H-1B status with another employer or have been in H-1B status in the past six years and subsequently have been absent from the U.S. for less than one year.

Other categories not impacted by the April 2009 deadline include H-1B petitions filed to: (1) extend the period of time a current H-1B worker may remain in the U.S.; (2) change the terms of employment for current H-1B workers; (3) allow current H-1B workers to change employers; or (4) allow current H-1B workers to work concurrently in a second H-1B position.

Please contact your Wolfsdorf Immigration Law Group professional if you have any questions about the H-1B program or other temporary work visas.