



USCIS Update

April 3, 2007

USCIS REACHES FY 2008 H-1B CAP

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) announced today that it has received enough H-1B petitions to meet the congressionally mandated cap for fiscal year 2008 (FY 2008). USCIS will use a random selection process (described below) for all cap-subject filings received on **April 2, 2007** and **April 3, 2007**. USCIS will reject and return along with filing fee(s) all petitions received on those days that are not randomly selected.

Cap Procedures: In keeping with USCIS regulations, USCIS will use the following process to handle H-1B petitions subject to the FY 2008 cap:

- USCIS has determined that as of April 2, 2007, it had received enough H-1B petitions to reach the FY 2008 H-1B cap and has set the “final receipt date” as April 2, 2007.
- In keeping with its regulations, USCIS will subject H-1B petitions received on the “final receipt date” and the following day to a computer-generated random selection process.
- USCIS will reject all cap-subject H-1B petitions for FY 2008 received on or after Wednesday, April 4, 2007.
- USCIS will reject and return along with the filing fee(s) all cap-subject H-1B petitions that are not randomly selected.
- Petitioners may re-submit petitions on April 1, 2008 when H-1B visas become available for FY 2009. This is the earliest date for which an employer may file a petition requesting FY 2009 H-1B employment with a start date of October 1, 2008.

As of late Monday afternoon (April 2), USCIS had received approximately 150,000 cap-subject H-1B petitions. USCIS must perform initial data entry for all filings received on April 2 and April 3 prior to conducting the random selection process. In light of the high volume of filings, USCIS will not be able to conduct the random selection for several weeks.

In order to fully utilize its data entry and initial processing capacity, USCIS may choose to distribute filings received at one service center to other service centers for data entry. In the event that USCIS exercises this option, petitioners may receive receipt notices or other correspondence from a service center other than the one to which the H-1B submission was sent. USCIS advises employers that there is no need for concern should that occur and that there is no need to contact USCIS.

Cap-Exempt Petitions: As directed by the *H-1B Visa Reform Act of 2004*, the first 20,000 H-1B petitions filed on behalf of aliens with U.S.-earned masters’ or higher degrees are exempt from any fiscal year cap on available H-1B visas. USCIS does not yet know how many of these petitions it has received as those petitions are mixed with the cap-subject cases received on April 2 and 3. USCIS will make a future announcement regarding the “final receipt date” for these petitions.

Current H-1B Workers: Petitions filed on behalf of current H-1B workers do not count towards the congressionally mandated H-1B cap. Accordingly, USCIS will continue to process 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.
- Allow current H-1B workers to work concurrently in a second H-1B position.

USCIS also notes that, in addition to the cap exemption for aliens with U.S. earned master's degrees discussed above, certain H-1B petitions are exempt from the cap. Those petitions are not affected by this release.

H-1B in General: U.S. businesses utilize the H-1B program to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, such as scientists, engineers, or computer programmers. As part of the H-1B program, the Department of Homeland Security (DHS) and the Department of Labor (DOL) require U.S. employers to meet specific labor conditions to ensure that American workers are not adversely impacted. The DOL's Wage and Hour Division safeguards the treatment and compensation of H-1B workers.

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