

ALERTS

Immigration Update

2012 H-1B CAP OPENS....TO MUCH SMALLER DEMAND THAN EXPECTED

04.13.2011

U.S. Citizenship and Immigration Services (USCIS) announced Friday that it is continuing to accept H-1B nonimmigrant petitions that are subject to the fiscal year (FY) 2012 cap. The agency began accepting these petitions on April 1, 2011, requesting an October 1st, 2011 start date. October 1, 2011 is the first day of the 2012 USCIS fiscal year.

USCIS has received approximately 5,900 H-1B petitions counting toward the 65,000 cap, and approximately 4,500 petitions toward the 20,000 cap exemption for individuals with U.S. advanced degrees for the 2012 fiscal year. Last year at this time, CIS had received 13,500 regular cap cases and 5600 Master's cap cases. While our national unemployment rate has dropped and economist are forecasting job increases, these have not yet translated into increased demand for H-1B cap-subject workers. As such, MVA predicts that H-1B visa numbers under the 2012 fiscal year quota will continue to be available for the next several months.

U.S. businesses use the H-1B program to employ foreign workers in specialty occupations that require theoretical or technical expertise equivalent to a US Bachelor's degree in that field or greater. Such workers include scientists, engineers and computer programmers, among others. USCIS will post regular updates on the processing of FY 2012 H-1B petitions towards the 2012 regular and Masters cap quotas. The most recent cap count can always be found [here](#). Should USCIS receive the number of petitions needed to meet the cap, it will issue an update advising the public that the FY 2012 H-1B cap has been met as of a certain date, known as the "final receipt date." The date USCIS informs the public that the cap has been reached may be days later than the actual final receipt date. To ensure a fair system, USCIS may, on the final receipt date, randomly select the number of petitions that will be considered for final inclusion within the cap. The agency will reject petitions subject to the cap that are not selected, as well as those received after the final receipt date. Whether a petition is received by the final receipt date will be based on the date USCIS physically receives the petition, not the date that the petition has been postmarked.

Cases for premium processing (faster processing of certain employment-based petitions and applications) of H-1B petitions filed during an initial five-day filing window are undergoing a 15-day processing period that began April 7. For all other H-1B petitions filed for premium processing, the processing period begins on the date that the petition is physically received at the correct USCIS Service Center.

As a reminder, petitions filed by employers who are exempt from the cap, as well as petitions filed on behalf of current H-1B workers who have been counted previously against the cap within the past six years, will not count toward the 2012 H-1B cap. Students in F-1 status currently working pursuant to Employment Authorization Documents (EAD's) issued to them upon completion of their college degree requirements for optional practical training will need to convert to an H-1B visa prior to the end of their approved training period in order to maintain US work authorization. If you have questions regarding the need to file for an H-1B

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visa number for a current or prospective employee under the 2012 H-1B cap, please contact a member of the MVA Immigration Team