

ALERTS

Immigration Update

05.09.2012

New H1-B Numbers Going Fast

U.S. Citizenship and Immigration Services (USCIS) reported that as of May 4, 2012, it had received approximately 32,500 petitions against the 58,200 H-1B standard cap numbers available (6800 are reserved for Singapore and Chilean nationals but may be released if USCIS anticipates they will not be used, as in previous years), and 13,700 petitions against the 20,000 cap exemption for foreign nationals holding U.S. advanced degrees.

The agency will continue accepting H-1B filings for those who qualify and will be counted against the cap until they receive a sufficient number to meet the annual quota. Should USCIS receive the number of petitions needed to meet the cap, it will issue an update advising the public that the FY 2013 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 differ from 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.

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 2013 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.

In light of the large number of H-1B cap subject petitions that USCIS has already received (particularly compared to last year), we expect the current numbers to be exhausted before the end of the summer. As such, we recommend employers initiate the H-1B process now if they require an H-1B for a new worker or are considering transitioning an existing worker to an H-1B to allow for extensions during a lengthy Green Card process. In our experience, by the time CIS announces they are nearing the cap limit, it will be too late to acquire a certified Labor Condition Application from the Department of Labor and file the H-1B petition before the cap is hit. In addition, we anticipate the numbers for next year to be utilized within the first five days of the initial filing period which begins on April 1, 2013 and ends on April 5, 2013. In the event USCIS receives enough petitions to meet the congressionally mandated cap for the fiscal year, there will be a random selection ("lottery") process for cap subject H-1B cases in both the regular and U.S. advance degree categories. This means that petitions not selected will be returned and no new H-1B numbers will be available

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until the following year. Again, we recommend employers initiate the H-1B process now in order to ensure employees who need H-1B status receive it.