

ALERTS

Immigration Update

06.13.2012

Fiscal Year 2013 H-1B Cap hit

Late last night, U.S. Citizenship and Immigration Services (USCIS) announced that it had received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2013. The fiscal year runs October 1, 2012 to September 30, 2013. However, employers may begin filing cap-subject petitions 6 months in advance, on April 1st, requesting an October 1st start date under the next year's quota. U.S. businesses use 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.

USCIS confirmed that June 11, 2012 is the "final receipt date" for new H-1B specialty occupation petitions requesting an employment start date in FY 2013. The "final receipt date" is the date on which USCIS determines that it has received enough cap-subject petitions to reach the limit of 65,000. The additional 20,000 H-1B visa numbers available to US advanced degree holders was previously hit on June 7, 2012. Properly filed cap-subject cases will be considered received on the date that USCIS physically receives the petition; not the date that the petition was postmarked. USCIS will reject cap-subject H-1B petitions that arrived after June 11, 2012.

The statutory cap applies to H-1B petitions for workers who are applying for an initial issuance of H-1B status. H-1B Petitions filed on behalf of current H-1B workers who have been counted previously against the cap, such as petitions to extend current H-1B status or to change employer for current H-1B workers, are not subject to the cap. Accordingly, USCIS will continue to accept and process petitions filed to:

- extend the amount of time a current H-1B worker may remain in the U.S.;
- change the terms of employment for current H-1B workers;
- allow current non-exempt H-1B workers to change employers; and
- allow current non-exempt H-1B workers to work concurrently in a second H-1B position.

April 1, 2013 will be the first date that employers can petition for cap-subject H-1B status for FY 2014, which begins October 1, 2013. Based upon this year's use of the quota numbers, we anticipate that next year's April 1, 2013 cap subject filings will go lottery if CIS receives more than 85,000 cap-subject filings the first week of April. As such, we recommend you contact us about any potential cap-subject filings under next year's cap **no later than March 1, 2013**. If you have any questions regarding cap-subject H-1B petitions, or options for cases that were not filed before the H-1B cap was reached, please call or email your *MVA Global Immigration Team Contact*.