



April 2016

## H-1B Cap Reached — Lottery Initiated and Premium Processing Delayed

On April 7, 2016, the U.S. Citizenship and Immigration Services (USCIS) announced that it reached the statutory cap of H-1B petitions for fiscal year (FY) 2017.

As predicted, the USCIS received a heavy demand for the current H-1B cap. Similar to the last three years (FY 2014, 2015, and 2016), the H-1B cap was reached within the first five business days of April, triggering the H-1B lottery. Under the lottery, all H-1B filings received over the first five business days are subject to a random lottery to determine which of these H-1B applications will be counted and included under the cap. Specifically, the USCIS holds two computer-generated random lotteries:

- First, the USCIS selects 20,000 H-1B visas for those holding a U.S. master's degree or higher. The qualifying petitions not selected in this lottery are added to the pool of remaining regular H-1B petitions.
- The USCIS then holds a second lottery to determine which of the remaining H-1B petitions will be accepted for processing for the remaining 58,200 visas. (Up to 6,800 visas are set aside from the cap of 65,000 during each fiscal year for the H-1B1 program under the terms of the legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements.)

H-1B cases received within the first five business days of April that are not selected in the lottery (and H-1B cases received after April 7) will be returned to the petitioner with an explanation that the H-1B cap has been reached and that H-1B numbers are no longer available under this year's cap.

Subsequently, the USCIS will only accept and process H-1B petitions that are exempt from the cap, including in these situations:

- to extend the H-1B status of a worker who has already been counted toward a prior H-1B cap
- to change the terms of employment for a current H-1B worker or to allow a current H-1B worker to change employers (that is, an H-1B "rollover" petition)
- for certain types of employers (such as institutions of higher education and nonprofit research employers) or certain J-1 physicians who are exempt from the cap

The USCIS has also suspended premium processing for H-1B cap cases. Typically, under premium processing, the USCIS adjudicates for a fee of \$1,225 the H-1B petition within 15 calendar days

(unless it requests additional information). At this time, the USCIS anticipates that premium processing for H-1B cap cases will resume no later than May 16, 2016.

The USCIS will begin accepting new H-1B petitions on April 1, 2017, for FY 2018 (for an employment start date of October 1, 2017).

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