

APRIL 18, 2017 BULLETIN TO ALL IMMIGRATION CLIENTS

USCIS Announces FY 2018 H-1B Visa Cap Reached

On April 7, the U.S. Citizenship and Immigration Services (USCIS) announced that it has received a sufficient number of H-1B petitions to reach the statutory quota of 65,000 standard H-1B petitions and the cap exemption of 20,000 for the U.S. advanced degree exemption. The total number of H-1B petitions received during the filing period, which began April 3 and ended April 7, was 199,000.

Because USCIS received more than enough cap petitions to meet the quota during the filing period, USCIS ran two computerized lotteries to choose the cases that will be processed to completion. The agency first conducted the selection process to meet the advanced-degree cap exemption of 20,000. Then, all unselected advanced degree petitions became part of the random selection process for the 65,000 cap. The second lottery drew from all remaining cases, including those not selected in the advanced-degree lottery, to select enough cases to fill the standard quota of 65,000. USCIS has already begun to issue receipt notices to employers whose cases were selected. For cap-subject petitions not randomly selected, USCIS will reject and return the petition with filing fees.

If we receive an unselected case, we will contact you immediately to review the situation and discuss any options that may exist. Please remember that there may be other visa alternatives to filing an H-1B petition. As we have done in the past when a case is not selected in the cap, we will work with you to identify any alternatives that will permit the affected employee to legally remain employed or begin employment in the United States.

Please note that the cap applies only to petitions for new H-1B visas, including petitions to change/convert from F-1 or L-1 to H-1B status. **The following are not subject to the cap**, i.e., the USCIS will continue to accept H-1B 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 (unless the worker seeks to change from “cap-exempt” H-1B employment to non-cap-exempt H-1B employment); and
- Allow current H-1B workers to work concurrently in a second H-1B position.

The USCIS will also continue to accept petitions for new H-1B employment where the petitioner/employer is not subject to the annual cap. To qualify as a “cap exempt” petitioner, the employer must be: (i) an institution of higher education or a related or affiliated nonprofit entity; (ii) a nonprofit research organization; or (iii) a governmental research organization.

Please note that while USCIS has not yet announced when it will lift the temporary suspension of premium processing for all H-1B cases (which took effect on March 3, 2017), it has indicated that it expects to continue this suspension for six (6) months.

Finally, petitioners may resubmit first-time employment H-1B petitions when H-1B visas become available for the 2019 fiscal year (FY 2019). The earliest date a petitioner may file a petition requesting FY 2019 H-1B employment (with an employment start date of October 1, 2018) is April 1, 2018.

Please contact any member of the Cohen & Grigsby Immigration Department if you have any questions regarding the above at 412.297.4900. To receive future bulletins and news alerts, please send an e-mail to bulletins@cohenlaw.com.

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