

APRIL 8, 2016 BULLETIN TO ALL IMMIGRATION CLIENTS

USCIS Announces FY 2017 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. USCIS has yet to provide the total number of H-1B petitions received during the filing period which began April 1 and ended April 7, but the total is expected to be near the record 233,000 petitions submitted last year.

Because USCIS received more than enough cap petitions to meet the quota during the filing period, USCIS will run two computerized lotteries to choose the cases that will be processed to completion. The first lottery will select enough cases to meet the advanced-degree cap exemption of 20,000. The second lottery will draw 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. Before running the lotteries, USCIS will complete initial intake for all filings received during the filing period, which ended April 7. **Due to the high number of petitions, USCIS is not yet able to announce the date it will conduct the random selection process.** Once USCIS runs the cap lotteries, it will begin to issue receipts to employers whose cases are selected. For cap-subject petitions not randomly selected, USCIS will reject and return the petition with filing fees. USCIS has not yet provided a time frame when it will begin to issue receipt notices and/or return unselected petitions. USCIS has also not yet announced when it will begin premium processing for H-1B cap cases, but has indicated it expects to start adjudicating premium process cases no later than May 16. In the past, USCIS has begun the premium process service earlier than its projected date. Processing of non-premium cases is expected to begin soon after the 15-day premium processing period, likely by the end of May.

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 CIS 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 CIS 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.

Last, petitioners may resubmit first-time employment H-1B petitions when H-1B visas become available for the 2018 fiscal year (FY 2018). The earliest date a petitioner may file a petition requesting FY 2018 H-1B employment (with an employment start date of October 1, 2017) is April 1, 2017.

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

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