

APRIL 13, 2018 BULLETIN TO ALL IMMIGRATION CLIENTS

USCIS Announces FY 2019 H-1B Visa Cap Lottery Completed

As noted in our prior client bulletin, the U.S. Citizenship and Immigration Services (USCIS) announced on April 6 that it received a sufficient number of H-1B petitions to reach the statutory quota (85,000) for fiscal year (FY) 2019. Specifically, USCIS received 190,098 H-1B petitions during the filing period from April 2 to April 6, including petitions filed for the advanced degree exemption.

On April 11, 2018, USCIS conducted the random, computerized lottery selection process for both the “advanced degree” exemption petitions as well as the general-category cap. USCIS first conducted the lottery process for the “advanced degree” petitions (20,000). Any unselected “advanced degree” petitions were then added to the general-category pool, and a second lottery was conducted to select the remaining 65,000 available H-1B visas and to reach the statutory quota of 85,000.

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, but we expect this to begin in late May. We will contact you as soon as we have any information regarding the status of your cap-subject petitions. As you may be aware, premium processing has been suspended for all cap-subject petitions, and is not expected to be reinstated until September 2018. Any petitions that are selected in the lottery will therefore be reviewed under regular processing.

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, we will work with you to try to develop and implement a solution 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 another nonimmigrant visa status to H-1B status. **The following are not subject to the cap**, i.e., 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.

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.

Last, petitioners may resubmit first-time employment H-1B petitions when H-1B visas become available for the 2020 fiscal year (FY 2020). The earliest date a petitioner may file a petition requesting FY 2020 H-1B employment (with an employment start date of October 1, 2019) is April 1, 2019.

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 bulletin@cohenlaw.com.

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