

H-1B Cap Reached for Fiscal Year 2019

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Today, April 6, 2018, the U.S. Citizenship and Immigration Services (“USCIS”) announced that it has received more H-1B cap petitions than the statutory available visas for both the general cap of 65,000 available H-1B visas and the additional 20,000 for U.S. advanced degree exemption, also known as the “master’s cap.” Therefore as mandated, USCIS will run a computerized random selection lottery to choose the petitions that will be selected for processing. As previous years, USCIS will run two lotteries. First, it will run a lottery for the advanced degree petitions for the 20,000 visas available; and then for the regular cap cases and those petitions that were not selected in the advanced-degree lottery, to fill the standard quota of 65,000 visas available. The petitions that are not selected in either lottery will be formally rejected and returned with their accompanying filing fees.

Due to the high volume of petitions this year, it will take USCIS some time to perform initial intake, run each lottery, issue receipts, and begin returning the rejected petitions back. H-1B employers should expect to wait at least several weeks or longer to begin to learn whether their cap petition is selected. If your petition is selected for processing, you will receive an official USCIS receipt notice, which is mailed to the H-1B petitioner (and their attorneys) by regular U.S. mail. This process can take well into May 2018 to be completed. Thereafter, USCIS will begin adjudicating the cap petitions. However, given the high volume of petitions filed this year, the suspension of premium processing, and a current backlog of non-cap cases, it could mean lengthy H-1B cap processing times. In addition, as we previously reported, USCIS may be issuing a higher than usual requests for evidence (RFEs) this year, so that may also slow the adjudication process down.

Now that the cap has been reached, USCIS will not accept any further cap-subject petitions until April 1, 2019. USCIS will continue to accept non-cap H-1B petitions, such as petitions to extend, amend and change employers as well as concurrent employment filings for existing H-1B workers. As per H-1B cap rules, petitions sponsored by institutions of higher education and their related or affiliated nonprofit entities, government research institutions and nonprofit research institutions are exempt from the cap.

As a reminder, USCIS temporarily suspended premium processing for FY 2019 cap subject petitions through September 10, 2018. This means that H-1B cap cases will not be eligible for 15-day processing until September 10 at the earliest. The option of premium processing remains available for non-cap H-1B petitions as well as other eligible visa petition categories.

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