

H-1B Fiscal Year (FY) 2014 Cap Season

The H-1B Program

Be advised: Premium processing for cap-subject H-1B petitions will begin on April 15, 2013. See the <u>Premium Processing</u> section for more details.

U.S. businesses use the H-1B program to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, including but not limited to: scientists, engineers, or computer programmers. If you are interested in submitting a petition for an H-1B visa, the (FY) 2014 Cap season begins on April 1, 2013.

For more information about the H-1B program, see the link to the left under temporary workers for <u>H-1B Specialty Occupations and Fashion Models</u>.

FY 2014 H-1B Cap

Сар Туре	Cap Amount	Cap Eligible Petitions	Date of Last Count
H-1B Regular Cap	65,000		
H-1B Master's Exemption	20,000		

Cap Eligible Petitions

This is the number of petitions that USCIS has accepted for this particular type of cap. It includes cases that have been approved or are still pending. It does not include petitions that have been denied.

Cap Amounts

The current annual cap on the H-1B category is 65,000. Not all H-1B nonimmigrants are subject to this annual cap. Please note that up to 6,800 visas are set aside from the cap of 65,000 during each fiscal year for the H-1B program under the terms of the legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements. Unused AILA InfoNet Doc. No. 13032544. (Posted 3/25/13)

numbers in this pool are made available for H-1B use for the next fiscal year.

How USCIS Determines if an H-1B Petition is Subject to the FY 2014 Cap

We use the information provided in Part C of the H-1B Data Collection and Filing Fee Exemption Supplement (Form I-129, pages 17 through 19) to determine whether a petition is subject to the 65,000 H-1B numerical limitation (the "cap"). Some petitions are exempt from the cap under the advanced degree exemption provided to the first 20,000 petitions filed for a beneficiary who has obtained a U.S. master's degree or higher. Unless otherwise exempt from the cap, petitions filed on behalf of beneficiaries who have obtained a U.S. master's degree or higher will be counted against the regular cap once USCIS has received sufficient petitions to reach the advanced degree exemption.

How to Determine if your H-1B Petition is Subject to the FY 2014 Cap

Petitions for new H-1B employment are exempt from the annual cap if the beneficiaries will work at institutions of higher education or related or affiliated nonprofit entities, nonprofit research organizations or governmental research organizations. Petitions filed on behalf of beneficiaries who will work only in Guam or the Commonwealth of the Northern Mariana Islands are exempt from the cap until Dec. 31, 2014. Employers may continue to file petitions for these cap-exempt H-1B categories seeking work dates starting in fiscal year (FY) 2013.

Petitions filed on behalf of current H-1B workers who have been counted previously against the cap also do not count toward the congressionally mandated H-1B cap. Accordingly, USCIS will continue to process FY 2013 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.
- Allow current H-1B workers to work concurrently in a second H-1B position.

When to File an FY 2014 H-1B Cap-Subject Petition

We will begin accepting H-1B petitions that are subject to the FY 2014 cap on April 1, 2013. You may file an H-1B petition no more than 6 months in advance of the requested start date.

Ensuring Your H-1B Cap Subject Petition is Properly Filed

Please comply with the following instructions to ensure that your petition is properly filed:

• Complete all sections of the Form I-129, Petition for a Nonimmigrant Worker, including the H Classification Supplement to Form I-129 (pages 11 and 12 of Form I-129) and the H-1B Data AILA InfoNet Doc. No. 13032544. (Posted 3/25/13)

Collection and Filing Fee Exemption Supplement (pages 17 through 19). We accept Form I-129 with a revision date of Nov. 23, 2010, or later.

- Sign the form preferably in black ink.
- Include a signed check(s) or money order(s) with the correct fee amount(s).
- Ensure that all required documentation and evidence is submitted with the petition at the time of filing for timely processing.

Note: It is your responsibility to ensure that Form I-129 is completed accurately. Failure to complete Form I-129 with the correct information and provide the required fees or documentation may result in the rejection or denial of the H-1B petition.

Additionally, be sure to file the petition at the correct USCIS Service Center. See section below on "Where to Mail Your H-1B Cap-Subject Petition."

Additional Documents Required With Your Petition Labor Condition Application (LCA)

You must submit a certified Department of Labor (DOL) LCA (Form ETA 9035) at the time of filing your petition. A copy of the LCA is acceptable.

Note: USCIS encourages petitioners to keep DOL LCA processing times in mind when preparing the H-1B petition and plan accordingly. If the LCA certified by DOL is for multiple positions, you must provide the name and USCIS case receipt number of any alien who has previously utilized the LCA. Petitioners should be sure to sign the LCA before submitting it with the petition to USCIS.

Please see <u>Department of Labor's Office of Foreign Labor Certification</u> website for more information on the LCA process.

Evidence of Beneficiary's Educational Background

You must submit evidence of the beneficiary's education credentials at the time of filing. If all of the requirements for the degree have been met, but the degree has not yet been awarded, the following alternate evidence may be submitted:

- A copy of the beneficiary's final transcript.
- A letter from the Registrar confirming that all of the degree requirements have been met (if the educational institution does not have a Registrar, such letter must be signed by the person in charge of the educational records where the degree will be awarded).

If you are indicating that the beneficiary is qualified based on a combination of education and experience, please provide substantiating evidence at time of filing.

A Duplicate Copy of the H-1B Petition

You must submit a duplicate copy of your H-1B petition and any subsequent response to a Request for Evidence or Notice of Intent to Deny (where applicable) if the beneficiary will be applying for a nonimmigrant visa abroad. USCIS will not make a second copy if one is not provided.

You may also choose to submit a duplicate copy of the petition with any subsequent response to a Request for Evidence or Notice of Intent to Deny (where applicable), even if the beneficiary is requesting a change of status to H-1B or an extension of stay, in case the beneficiary later decides to seek visa issuance abroad or the H-1B petition is approved but the beneficiary's concurrent change of status or extension of stay request is denied.

You may review the <u>Department of State</u> website to make sure that the consulate indicated on Form I-129 is able to process the beneficiary's nonimmigrant visa application and for any other consulate-specific special instructions.

Multiple or Duplicative Filings

On March 19, 2008, USCIS announced a regulatory change to prohibit employers from filing multiple or duplicative H-1B petitions for the same employee. To ensure fair and orderly distribution of available H-1Bs, USCIS will deny or revoke multiple or duplicative petitions filed by an employer for the same H-1B worker and will not refund the filing fees submitted with multiple or duplicative petitions.

Where to Mail Your H-1B Cap-Subject Petition

You must file your petition at the correct Service Center depending on the jurisdiction of the H-1B beneficiary's work location(s) as specified in the petition. We have established specific mailing addresses for purposes of identification and processing of H-1B cap-subject cases.

To determine which jurisdiction you are in, see our Web page <u>Direct Filing Addresses for Form I-129</u>. Petition for Nonimmigrant Worker.

Note: A separate mailing address has been established for certain types of educational or nonprofit organizations which file H-1B petitions on behalf of beneficiaries that are exempt from the H-1B numerical limitations.

Please read the filing instructions very carefully. If you file your petition incorrectly, we will reject the petition. Rejected petitions will not retain a filing date and will not be counted toward the H-1B cap.

Required Fees

There are different fees depending on the type of H-1B petition you are submitting. Please refer to *H-1B Data Collection and Filing Fee Exemption Supplement* (pages 17-19 of Form I-129) for detailed instructions on fees.

The following fees may be required with a cap-subject petition: Base filing fee:

• \$325

American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) fee:

(see H-1B Data Collection and Filing Fee Exemption Supplement, Part B):

- \$750 for employers with 1 to 25 full-time equivalent employees, unless exempt.
- \$1,500 for employers with 26 or more full-time equivalent employees, unless exempt.

Fraud Prevention and Detection fee:

• \$500 to be submitted with a request for initial H-1B status or with a request for a beneficiary already in H-1B status to change employers (does not apply to Chile/Singapore H-1B1 petitions).

Public Law 111-230:

- \$2,000 to be submitted by a petitioner which employs 50 or more employees in the United States where more than 50 percent of its employees in the United States are in H-1B or L-1 nonimmigrant status.
- Must be submitted with a request for initial H-1B status or a request for a beneficiary already in H-1B status to change employers.

Premium Processing fee:

• \$1,225 for employers seeking Premium Processing Service.

Checks

Make checks payable to the Department of Homeland Security or U.S. Citizenship and Immigration Services, dated within the last 6-months, and include the proper guarantee amount and signature.

Money Orders

Money orders must be properly endorsed.

Non-payable Checks or Other Financial Instruments

USCIS will reject all applications or petitions submitted with the incorrect filing fee. Rejected petitions and petitions in which the check or other financial instrument used to pay the filing fee is returned as non-payable will not retain a filing date. See 8 CFR 103.2(a)(7)(i).

Petitioners are generally provided the opportunity to correct a fee deficiency, according to the

regulations, but the filing date is not established unless and until the fee deficiency has been corrected. H-1B cap-subject petitions with non-payable fees will be given a new filing date the day the fee deficiency has been corrected, as long as the cap has not been met. If the new filing date is after the cap has been met, the petition will be rejected.

Premium Processing Service

USCIS has temporarily adjusted its premium processing practice due to expected high volumes of immigration benefit requests filed during early April 2013. Premium processing for all cap-subject H-1B will begin on April 15, 2013. This also applies to H-1B petitions seeking an exemption from the fiscal year cap for individuals who have earned a U.S. master's degree or higher. For details please read the <u>USCIS Alert</u>.

USCIS will continue to accept Form I-907, Request for Premium Processing Service, with fee, concurrently with the Form I-129 Petition for Nonimmigrant Worker, during the time period that premium processing is unavailable from April 1 to April 14, 2013. Petitioners may also upgrade a pending H-1B cap petition to premium processing once a receipt notice is issued. All requests for premium processing received between April 1, 2013 and April 14, 2013 will be adjudicated when premium processing begins on April 15, 2013.

Please note that the Form I-797 receipt notice may indicate the date that the premium processing fee is received; however, for cases received between April 1, 2013 and April 14, 2013, the 15-day processing period set by 8 CFR 103.7(e)(2) will not begin until April 15, 2013.

USCIS will not adjust premium processing service for H-1B petitions that are not subject to the cap or any other eligible classification.

Premium Processing Service provides expedited processing of certain employment-based petitions and guarantees a 15-calendar-day processing time.

To request premium processing, submit:

- The Form I-907, Request for Premium Processing Service, and
- The filing fee of \$1,225 (this fee is in addition to, and in a separate remittance from, the required base filing and other applicable fees and cannot be waived).

You can file the Form I-907 and corresponding fee:

- At the same time as Form I-129, Petition for a Nonimmigrant Worker, or
- At any time after you file Form I-129 while it is still pending.

If Form I-907 is filed after the Form I-129, include the receipt number (e.g., EAC 12 123 51234) of the Form I-129 in the pertinent section of Form I-907.

Note: We will only accept the 08/10/09N (or later) edition of Form I-907.

Please see the link to the right for more information concerning the Premium Processing program.

Organizing your H-1B package

Clearly label all H-1B cap cases, preferably in red ink, on the top margin of Form I-129. Use the following codes:

- Regular Cap (65,000 regular cap cases, not including Chile/Singapore cap cases)
- C/S Cap (Chile/Singapore H-1B1s)
- U.S. Master's (20,000 exemption for beneficiaries with U.S. master's or higher degrees)

A separate check for each applicable filing fee (Form I-129, Premium Processing, Fraud Fee, ACWIA fee, and Public Law 111-230) is preferred. Applicable fees should be stapled to the bottom right corner of the top document.

Preferred order of documents at time of submission:

- Form I-907 (if filing for Premium Processing Service)
- Form G-28 (if represented by an attorney or accredited representative)
- Form I-129, Petition for a Nonimmigrant Worker
- Addendums/Attachments
- H Classification Supplement to Form I-129 and/or Free Trade Supplement (for H-1B1 Chile-Singapore petitions)
- H-1B Data Collection and Filing Fee Exemption Supplement
- All supporting documentation to establish eligibility
- Provide a Table of Contents for supporting documentation
 - Tab items as listed in Table of Contents
 - Arrival-Departure Record (Form I-94) if the beneficiary is in the U.S.
 - SEVIS Form I-20 if the beneficiary is a current or former F-1 student or F-2 dependent
 - SEVIS Form DS-2019 if the beneficiary is a current or former J-1 or J-2
 - Form I-566 if the beneficiary is a current A or G nonimmigrant
 - DOL certified LCA, Form ETA 9035
 - Employer/attorney/representative letter(s); and
 - Other supporting documentation.
- Duplicate copy of the petition, if necessary. Clearly identify the duplicate copy of the petition as "COPY", so that it is not mistaken for a duplicate filing.

How to mail multiple petitions together

If multiple petitions will be included in the same courier service or postal service package, please place individual petitions into separate envelopes within the package. Individual petition envelopes should be marked with the following labels to reference the type of petition:

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- Master's Premium
- Master's
- Regular Premium
- Regular
- Chile/Singapore

Filing Tips:

Form G-28, Notice of Entry of Appearance as Attorney or Representative

If the petitioner will be represented by an attorney or other accredited representative, a properly executed Form G-28 should be submitted. Each Form G-28 should include the following:

- All sections completed
- The printed name and signature of the representative
- The original signature of the petitioner.

Form I-129, Petition for a Nonimmigrant Worker

- Complete all sections of the form accurately.
- H-1B cap petitions and advanced degree exemption petitions for the FY13 cap must include an employment start date of no earlier than October 1, 2013. H-1B petitions requesting an earlier employment start date or a start date of "As Soon As Possible" or "ASAP" will be rejected.
- Ensure that the petition is properly signed. Please see the Related Links section for more information on properly signing the petition.
- Petitioners should enter their own address in Part 1, question 3 of the Form I-129 to ensure that the I-797 receipt and approval notices are sent to the petitioner.

Please note: Using an address other than the petitioner's address as the mailing address may cause processing delays related to the Validation Instrument for Business Enterprises (VIBE), as VIBE automatically uses the address provided on the petition to validate the petitioner's current location. If petitioners use an attorney's address as the mailing address on the I-129 petition, a cover letter should be included with the filing that clearly indicates the current address of the petitioner. This information will be used to assist the Immigration Services Officer (ISO) in completing a manual check in VIBE using the petitioner's address. In addition, if an attorney's address is used as the petitioner's mailing address on the form, the petitioner will not receive any I-797 notices.

- Ensure the beneficiary's name is spelled properly and that his/her date of birth is displayed in the proper format (mm/dd/yyyy). Also, country of birth/citizenship and the I-94 number (if applicable) should be reviewed for accuracy.
- If the beneficiary will ultimately be seeking issuance of a visa at a consular office abroad, a copy of the petition and supporting documentation should be included with the filing. For cases where the beneficiary will be seeking a change of status or extension of stay in the United States, you may still choose to submit a duplicate copy in the event the beneficiary will be seeking issuance of a visa at a consular office abroad following the approval of the change of status or extension of stay.
- If the beneficiary is seeking an extension or change of status, the petition should include evidence AILA InfoNet Doc. No. 13032544. (Posted 3/25/13)

(e.g. Form I-94 or Form I-797 approval notice) to establish that the beneficiary will have maintained a valid nonimmigrant status through the employment start date being requested.

• Include a copy of the beneficiary's valid passport.

H Classification Supplement to Form I-129 (pages 11 and 12 of Form I-129)

- Please be sure to complete all sections of the form accurately.
- In listing previous periods of stay in H/L classification (question 3), please also include the actual nonimmigrant classification held (e.g. H-1B or L-1)
- Petitioner must sign the form, preferably in black ink.

H-1B Data Collection and Filing Fee Supplement form (pages 17 through 19 of Form I-129)

- Please be sure to complete all sections of the form accurately.
- Please enclose page 17 through 19 of the Form I-129 (with a revision date of Nov. 23, 2010 or later).
- Be sure to answer appropriately in Part A, question 2 and Part C, question 2 if the beneficiary has earned a master's degree or higher from a U.S. educational institution as defined in 20 U.S.C. 1001(a).
- If the answer to the first question in Part D on page 19 is "No," that the beneficiary will not be assigned to work at an off-site location, then responses to the remaining two questions in Part D are not required.

Form I-907, Request for Premium Processing

- Please be sure to complete all sections of the form accurately with original signatures. Note: We will accept the 08/10/09 edition of Form I-907 (or later).
- The representative may sign in both Parts 3 and 4 of the Form I-907 if there is a valid Form G-28 with the filing. Otherwise, the petitioner's signature is required. Preferably, the signature(s) should be in black ink.
- Please include a copy of the Form I-129 receipt notice along with the Form I-907 when Form I-907 is filed after the filing of Form I-129.
- Please provide the \$1,225 filing fee in a separate check or money order.

This page can be found at http://www.uscis.gov/h-1b count

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Plug-ins