



**U.S. Citizenship
and Immigration
Services**

H-1B Cap Exemptions Based on Relation or Affiliation

Update as of March 18, 2011

WASHINGTON— U.S. Citizenship and Immigration Services (USCIS) announced today, in response to recent stakeholder feedback, that it is currently reviewing its policy on H-1B cap exemptions for non-profit entities that are related to or affiliated with an institution of higher education. Until further guidance is issued, USCIS is temporarily applying interim procedures to H-1B non-profit entity petitions filed with the agency seeking an exemption from the statutory H-1B numerical cap based on an affiliation with or relation to an institution of higher education.

Effective immediately, during this interim period USCIS will give deference to prior determinations made since June 6, 2006, that a non-profit entity is related to or affiliated with an institution of higher education – absent any significant change in circumstances or clear error in the prior adjudication – and, therefore, exempt from the H-1B statutory cap. However, the burden remains on the petitioner to show that its organization previously received approvals of its request for H-1B cap exemption as a non-profit entity that is related to or affiliated with an institution of higher education.

Petitioners may satisfy this burden by providing USCIS with evidence such as a copy of the previously approved cap-exempt petition (i.e. Form I-129 and pertinent attachments) and the previously issued applicable I-797 approval notice issued by USCIS since June 6, 2006, and any documentation that was submitted in support of the claimed cap exemption. Furthermore, USCIS suggests that petitioners include a statement attesting that their organization was approved as cap-exempt since June 6, 2006.

USCIS emphasizes that these measures will only remain in place on an interim basis. USCIS will engage the public on any forthcoming guidance.

The H-1B is a nonimmigrant visa that allows U.S. employers to temporarily employ foreign workers in specialty occupations. Unless determined to be exempt, H-1B petitions are subject to either the 65,000 statutory cap or the 20,000 statutory visa cap exemption. By statute, H-1B visas are subject to an annual numerical limit, or cap, of 65,000 visas each fiscal year. The first 20,000 petitions for these visas filed on behalf of individuals with U.S. master's degrees or higher are exempt from this cap.

Evidence of previous determinations of cap exemption, as discussed in this Update, will be considered on a case by case basis only when submitted with a Form I-129 petition for H-1B status requesting exemption from the numerical cap, or in response to a Request for Evidence or Notice of Intent to Deny for H-1B petitions currently pending with USCIS claiming exemption from the cap. Petitioners are accordingly advised not to send separate correspondence containing their cap-exemption evidence to USCIS on this issue.