

June 1, 2006

Press Release

USCIS REACHES H-1B CAP

Washington, D.C. - U.S. Citizenship and Immigration Services (USCIS) announced today that it has received a sufficient number of H-1B petitions to meet the congressionally mandated cap for fiscal year 2007 (FY 2007). The "final receipt date" for H-1B petitions subject to the FY 2007 annual cap was May 26, 2006. Affected H-1B petitions received on that date will be subject to the random selection process described below. H-1B petitions subject to the FY 2007 annual cap that are received by USCIS after the "final receipt date" will be rejected. Additional information regarding the specific number of H-1B petitions processed is available at: www.uscis.gov/graphics/services/tempbenefits/cap.htm.

Cap and Set Asides : Congress has established an annual fiscal year limitation of 65,000 on the number of available H-1B visas, commonly referred to as the "H-1B cap." Under the terms of the legislation implementing the United States-Chile and United States-Singapore Free Trade Agreements, 6,800 of the 65,000 available H-1B visas are annually set aside for the Chile/Singapore H-1B1 program. As a result of reserving 6,800 H-1B1 visas for FY 2007, the H-1B cap for that fiscal year is 58,200. However, USCIS has added back to the H-1B cap 6,100 unused FY 2006 H-1B1 visas, for a total of 64,300, as described below.

Unused Chile/Singapore visa numbers for a particular fiscal year are to be used within the first 45 days of the next fiscal year. As FY 2007 H-1B petitions are approved for start dates beginning no earlier than the first day of fiscal year 2007 and reasonable anticipated usage of approved H-1B petitions for any 45-day period exceeds 8,000, USCIS has incorporated its reasonable projection based on H-1B1 usage to date that 700 H-1B1 visa numbers will be used in FY 2006 into the FY 2007 H-1B cap count by adding the remaining 6,100 unused H-1B1 visas back into that count, resulting in a total cap of 64,300 FY 2007 H-1B visas approvable. Because unused H-1B1 visas for FY 2006 have been already allocated in this manner, there will be no additional later H-1B filing season to use these visas. The 6,800 visas reserved from the FY 2007 H-1B count for FY 2007 H-1B1 purposes are anticipated to be handled in a similar manner with respect to the FY 2008 H-1B cap count during calendar year 2007. This allocation of FY 2006 H-1B1 visas based upon reasonable projections of usage to the end of the fiscal year will not affect the availability of H-1B1 visas in any way; they will continue to be fully available, with any year-end difference between actual and projected usage expected to be minimal.

Cap Procedures : In accordance with the procedures announced in the *Federal Register* at 70 FR 23775 (May 5, 2005) (Allocation of Additional H-1B Visas Created by the H-1B Visa Reform Act of 2004) USCIS has implemented the following process for handling H-1B petitions subject to the FY 2007 cap:

- USCIS closely monitored FY 2007 H-1B filings and used projections to determine the date on which it received the number of petitions necessary to reach the Congressionally mandated cap.
- USCIS determined that the Congressionally mandated cap had been exceeded on May 26, 2006, the "final receipt date."
- USCIS will subject H-1B petitions received on the "final receipt date" to a computer-generated random selection process. This process will enable USCIS to apply the remaining number of available H-1B visas to petitions received on that day.

- Cap subject H-1B petitions that are not randomly selected in the process described above will be rejected and returned along with the filing fee(s).
- Petitioners may re-submit the petitions when H-1B visas become available for FY 2008.
- The earliest date for which a petitioner may file a petition requesting FY 2008 H-1B employment with an employment start date of October 1, 2007, is April 1, 2007.

Current H-1B Workers : Petitions filed on behalf of current H-1B workers do not count towards the Congressionally mandated H-1B cap. Accordingly, USCIS will continue to process 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.

Cap-Exempt Petitions : As directed by the H-1B Visa Reform Act of 2004, the first 20,000 H-1B petitions filed on behalf of aliens with U.S.-earned masters' or higher degrees will be exempt from any fiscal year cap on available H-1B visas. For FY 2007, USCIS has received approximately 5,830 exempt petitions.

USCIS also notes that petitions for new H-1B employment are exempt from the annual cap if the aliens will be employed at institutions of higher education or a related or affiliated nonprofit entities, or at nonprofit research organizations or governmental research organizations. Thus, petitions for these exempt H-1B categories may be filed for work dates starting in FY 2006 or 2007.

H-1B in General: U.S. businesses utilize the H-1B program to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, such as scientists, engineers, or computer programmers. As part of the H-1B program, the Department of Homeland Security (DHS) and the Department of Labor (DOL) require U.S. employers to meet specific labor conditions to ensure that American workers are not adversely impacted, while the DOL's Wage and Hour Division safeguards the treatment and compensation of H-1B workers.

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On March 1, 2003, U.S. Citizenship and Immigration Services became one of three legacy INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing our nation's security.