U.S. Citizenship and Immigration Services

H-1B Fiscal Year (FY) 2012 Cap Season

The H-1B Program

U.S. businesses use 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.

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

How USCIS Determines if an H-1B Petition is Subject to the FY 2012 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.

FY 2012 H-1B Cap Count

Cap Type	Cap Amount	Cap Eligible Petitions	Date of Last Count
H-1B Regular Cap	65,000	32,200	9/9/2011
H-1B Master's Exemption	20,000	16,700	9/9/2011

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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-1B1 program under the terms of the legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements. Unused numbers in this pool are made available for H-1B use for the next fiscal year.

When to File an FY 2012 H-1B Cap-Subject Petition

We will begin accepting H-1B petitions that are subject to the FY 2012 cap on April 1, 2011. You may file an H-1B petition no more than 6-months in advance of the requested start date.

- Petitions seeking an FY 2012 H-1B cap number with an Oct. 1, 2011 start date can be filed no sooner than April 1, 2011.

Note: If you request a start date for a FY 2012 cap-subject H-1B petition that is prior to Oct. 1, 2011 or submit a cap-subject petition prior to April 1, 2011, your petition will be rejected.

How to Ensure USCIS Considers Your H-1B Cap-Subject Petition Properly Filed

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

- Complete all sections of the Form I-129 petition, including the H Classification Supplement to Form I-129 (pages 11 and 12 of Form I-129) and the H-1B Data Collection and Filing Fee Exemption Supplement (pages 17 through 19). We accept Form I-129 with a revision date of November 23, 2010, or later.
    - Original signatures, preferably in blue ink, are required on each form.
- Include a signed check or money order with the correct fee amount.
- Ensure that all required documentation and evidence is submitted with the petition at the time of filing to ensure 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 ensure that they have signed the LCA prior to the LCA being submitted with the petition to USCIS.

Please see Department of Labor's Office of Foreign Labor Certification website for further information on the LCA process.

Evidence of Beneficiary's Educational Background

You must submit evidence of the beneficiary's educational degree 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; or
- 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 at the time of filing if the beneficiary will be seeking nonimmigrant visa issuance 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 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 Department of State 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 an interim final rule on H-1B visas to prohibit employers from filing multiple or duplicative H-1B visas for the same

employee. To ensure fair and orderly distribution of available H-1B visas, 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 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 Direct Filing Addresses for Form I-129, 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.

Required Fees

There are different fees depending on the type of H-1B petition you are submitting. Please refer to *Fee Exemption and/or Determination* (pages 17 and 18 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 the initial H-1B petition filed on behalf of each beneficiary by a petitioner (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.

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).

While petitioners are generally provided the opportunity to correct a fee deficiency, pursuant to the regulations, the filing date is not established until and unless 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

H-1B petitions are eligible for the Premium Processing Service. Petitioners may choose to file a Request for Premium Processing Service (Form I-907) to have their petition processed within 15 calendar days. To request premium processing submit:

- the Form I-907 and
- the filing fee of $1,225 (this fee is in addition to 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 or
- at any time after you file Form I-129 while it is still pending.

If filed after the Form I-129, be sure to include the receipt number (e.g., EAC 11 123 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
- H Classification Supplement to Form I-129
- 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 indentify 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 Post Office 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:

- 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.
- Ensure that the petition is properly signed. Please see the Related Links section for more information on properly signing the petition.
- Provide the petitioner name and address on the USCIS petition form. It is critical that petitioners accurately provide their name and address on the USCIS petition form. This facilitates USCIS in matching information from the petition with information received from the Independent Information Provider (IIP) through the Validation Instrument for Business Enterprises (VIBE). Listing an attorney or representative's address in the "Petitioner Information" section of the form may result in the issuance of an RFE.
- 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, a copy is suggested, but not necessary.
- If the beneficiary is seeking an extension or change of status, the petition should include evidence (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 blue 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 November 23, 2010 or later).
- Be sure to answer appropriately in Part A, question 5 and Part C, question 2 if the beneficiary has earned a master's degree or higher from a U.S. educational institution.
- 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 blue 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.

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

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Plug-ins