

April 2015

H-1B Cap Reached – Lottery Initiated and Premium Processing Delayed

On April 7, 2015, the U.S. Citizenship and Immigration Services (USCIS) announced that it reached the statutory cap of H-1B petitions for fiscal year (FY) 2016.

As predicted, the USCIS received a heavy demand for the current H-1B cap. Similar to the last two years (FY 2014 and 2015), the H-1B cap was reached within the first five days of April, triggering the H-1B lottery. Under the lottery, all H-1B filings received over the first five days are subject to a random lottery to determine which of these H-1B applications will be counted and included under the cap. Specifically, the USCIS holds two computer-generated random lotteries:

- First, the USCIS selects 20,000 H-1B visas for those holding a U.S. master's degree or higher. The qualifying petitions not selected in this lottery are added to the pool of remaining regular H-1B petitions.
- The USCIS then holds a second lottery to determine which of the remaining H-1B petitions will be accepted for processing for the remaining 58,200 visas. (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.)

H-1B cases received within the first five days of April that are not selected in the lottery (and H-1B cases received after April 7) will be returned to the petitioner with an explanation that the H-1B cap has been reached and that H-1B numbers are no longer available under this year's cap. Subsequently, the USCIS will only accept and process H-1B petitions that are exempt from the cap, including in these situations:

- to extend the H-1B status of a worker who has already been counted toward a prior H-1B cap
- to change the terms of employment for a current H-1B worker or to allow a current H-1B worker to change employers (that is, an H-1B "rollover" petition)
- from certain types of employers (such as institutions of higher education and nonprofit research employers) or certain J-1 physicians who are exempt from the cap

The USCIS has also suspended premium processing for H-1B cap cases. Typically, under premium processing, the USCIS adjudicates for a fee of \$1,225 the H-1B petition within 15 calendar days (unless it requests additional information). At this time, the USCIS anticipates that premium processing for H-1B cap cases will resume no later than May 11, 2015.

The USCIS will begin accepting new H-1B petitions on April 1, 2016, for FY 2017 (for an employment start date of October 1, 2016).

If you have any questions about the content in this legal update, contact one of [Robinson+Cole's Immigration Group](#) members below. We have experienced attorneys who assist clients with a wide range of immigration issues.

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