



April 2016

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

On April 7, 2016, the U.S. Citizenship and Immigration Services (USCIS) announced that it reached the statutory cap of H-1B petitions for fiscal year (FY) 2017.

As predicted, the USCIS received a heavy demand for the current H-1B cap. Similar to the last three years (FY 2014, 2015, and 2016), the H-1B cap was reached within the first five business days of April, triggering the H-1B lottery. Under the lottery, all H-1B filings received over the first five business 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 business 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)
- for 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 16, 2016.

The USCIS will begin accepting new H-1B petitions on April 1, 2017, for FY 2018 (for an employment start date of October 1, 2017).

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

[Megan R. Naughton](#) | [Joshua S. Mirer](#) | [Lauren M. Sigg](#) | [Jennifer L. Shanley](#)

For insights on legal issues affecting other industries, please visit our [Thought Leadership](#) page and subscribe to any of our newsletters or blogs.

Boston | Hartford | New York | Providence | Stamford | Albany | Los Angeles | Miami | New London | [rc.com](#)

Robinson & Cole LLP

© 2016 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.