

H-1B Visa Cap Reached, Now What?

U.S. Citizenship and Immigration Services (“USCIS”) released its report, stating the current count of H-1B visa petitions that it received on April 2 and 3, 2007. The report indicates that, during the first two days of filing, USCIS received 133,000 H-1B visa petitions. This is lower than its original estimate of 150,000 petitions – but this number still vastly exceeds the annual limit of 65,000 regular H-1B visas for Fiscal Year 2008 (“FY 2008”).

USCIS is still sorting through all the petitions to determine which cases are subject to the H-1B visa regular cap, which cases are eligible for the 20,000 advanced-degree H-1B visa exemptions, and which cases may be entirely cap exempt. Of the cases sorted by Wednesday, April 4, 2007, 28,052 H-1B visa petitions were subject to the FY2008 regular cap, and 4,703 were eligible for one of the 20,000 advanced-degree exemptions. USCIS promises updates as they complete the sorting process.

USCIS will conduct a computer-generated, random selection “lottery” of the cap-subject petitions received during the first two business days of filing, after it completes the sorting process. The “lottery” is not a separate process for H-1B visa eligibility. It is the method USCIS will utilize in order to select the cases it will actually process in order to fill the 65,000 available H-1B visa slots for FY2008. Pursuant to federal regulations, when the cap limit is reached on the first day of filing, a “lottery” applies, including cases filed on the first two working days. Thus, H-1B visa petitions received on both April 2 and April 3, 2007 will undergo data entry for the “lottery” process.

All H-1B filings received on April 2nd and 3rd must be entered into the USCIS database system before conducting the “lottery” selection process. USCIS estimates that it may take up to one month to complete the data entry and “lottery” because of the overwhelming volume of H-1B visa petitions received. Any H-1B cap-subject case that is not selected in the “lottery” will be rejected, and returned along with all filing fees.

Our worst fears have come true. The valuable and limited slots for regular H-1B visa cap-subject workers are gone, and only the fortunate recipients have yet to be identified. The status of the 20,000 numbers available for advanced-degree cap petitioners remains unknown. This will be revealed as USCIS painstakingly reviews each filing.

Foreigners and the U.S. are faced with a terrible situation. Countless U.S. employers, relying upon the availability of fully-educated professional employees for FY2008, must now wait another eighteen months without the workers they desperately need. This will negatively impact our country’s place in the global economy.

The U.S. Congress must act now. The need for immigration reform is obvious. We at The Guerrero Law Firm will continue lobbying for comprehensive immigration law reform. We encourage readers to contact the U.S. Congress, as well. It is our right and responsibility to do so. A model letter is available on the American Immigration

Lawyer's Association's internet website at www.aila.org. You should also write letters to the editor of your local newspaper, and the producers of the radio and television news programs that you listen to. When we are united, with unrelenting voices from the U.S. economy, such a technology companies, healthcare facilities, colleges and universities, as well as other pro-immigration voices, the U.S. government will not be able to continue to ignore urgent U.S. immigration issues.

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