

H-1B Visa Cap & F-1 Student Change of Status Updates

Those who filed new H-1B visa petitions for the 2009 fiscal year continue to wait for receipt notices identifying their case for full adjudication by United States Citizenship and Immigration Services (USCIS). It has been several weeks since USCIS conducted – what has now become its annual – random computer-generated lottery to select the new fiscal year H-1B visa petitions for determination. The petitions selected in the lottery will go on to be adjudicated pursuant to their particular manner of filing – either standard or premium processing. Those petitions not selected will be returned, along with the USCIS fees, to the petitioner.

USCIS has stated that petitioners who filed a petition selected in the lottery should receive an H-1B visa petition filing receipt notice dated not later than June 2, 2008. Thus, such petitioners may reasonably expect their receipt notices during May or June 2008. USCIS also states that the total adjudication process is expected to last approximately eight to ten weeks.

Interestingly, USCIS is reserving some H-1B visa petitions filed – but not initially selected in the lottery. The reason behind this procedure is so that USCIS may run a secondary lottery to address the problem of certain rejected cases. As a result, it is possible that an H-1B visa petition that is not initially selected may ultimately be chosen for full adjudication. Examples of certain rejected cases may include, but are not limited to, those filed with the improper filing fee amounts, and unsigned petitions.

As I explained in my article last week “OPT Changes Help H-1B Visa Applicants & F-1 Students,” USCIS will permit certain F-1 visa students to seek a change of status to H-1B visa status pursuant to the April 11th “Cap-Gap” regulation. In order for such an F-1 student to seek a change of status – though they filed an H-1B visa petition requesting consular processing – USCIS has instructed the student must make a request to change status within thirty days of the H-1B visa petition filing receipt notice date.

Such a request may be made via e-mail to the USCIS service center where the F-1 student’s H-1B visa petition is pending. In fact, USCIS has set up specific e-mail addresses for this purpose. These e-mail addresses are as follows:

California Service Center

Premium Processing cases - CSC.ppcapgap@dhs.gov

Standard Filing cases - CSC.nonppcapgap@dhs.gov

Vermont Service Center

Premium Processing cases - VSCPPCAPGAP.Vscppcapgap@dhs.gov

Standard Filing cases - VSCNONPPCAPGAP.Vscnonppcapgap@dhs.gov

Thankfully, petitioners and beneficiaries continue to exhibit patience through the H-1B visa petition process – though the U.S. government has made it increasingly difficult for U.S. employers to hire skilled foreign labor. Hopefully, we will begin to see greater relief in the H-1B visa category – both in procedure and policy – in order to ameliorate the significant problems that have led to the marginalization of this visa category.

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