

Update on H-1B Visa Receipts and Master's Cap

Update on Cap-Subject H-1B Visa Cases: Concerning those H-1B visa petitions filed on April 2nd or 3rd of this year, the U.S. Citizenship and Immigration Service (“USCIS”) previously indicated May 11, 2007 as the target date for it to complete its sending of receipt notices to all petitioners who were selected in this year’s cap-subject H-1B visa petition acceptance lottery. To date, our law firm has received notification about over 95% of all of the cases we filed on April 2nd. Thus, if you still have not heard from USCIS regarding whether your case was selected in the lottery, you should learn very soon.

Update on Master’s Degree Cap-Exempt H-1B Visa Cases: On May 4, 2007, USCIS announced that it received enough new H-1B visa petitions from foreigners holding a U.S. master’s degree or higher, seeking an exemption from the fiscal year 2008 H-1B visa numerical cap. The “final receipt date” for these cases is April 30, 2007. All petitions received on April 30th were subject to a random computerized lottery.

Since this announcement, many have asked whether USCIS has already conducted the master’s degree cap random computerized lottery. The answer to this question is, “yes.” USCIS ran the random number generator (referred to as the “RNG” by USCIS) for H-1B master’s cap-exempt cases received on April 30, 2007 only.

But, strangely, many American Immigration Lawyers Association (AILA) members have received receipt notices, dated after April 30th, for cases they believed actually arrived at USCIS for filing on April 30, 2007. Many wonder whether these cases are included in the lottery. Apparently, unless the case actually arrived at USCIS on April 30th or earlier, it was not part of the lottery. Just because your case was issued a receipt notice after April 30th does not mean it is part of the lottery. In the event that USCIS generated a receipt notice indicating an incorrect receipt date to your detriment, then your attorney should notify USCIS and dispute the mistake immediately.

Interestingly, only days after April 30th, many AILA members already began reporting receipt of case approvals (under premium processing) for cases filed on April 30th. USCIS has confirmed that the cases selected by the RNG have been sent to the USCIS adjudication officers. Indeed, many cases were approved only a few days after their filing date, if filed via premium processing.

USCIS has also confirmed that cases received on May 1st or later will be rejected and fees will be returned. If a case was received on May 1st or later and was data entered, it will be rejected as well, and the fee will be refunded to the petitioner or his or her attorney of record.

In the event your case was not filed timely, or was not selected by the RNG, you should consider other available visa options as soon as possible. Do not allow such a setback to prevent you from seeking and acquiring the immigration benefits your desire.

Atty. Rio M. Guerrero is the managing partner of The Guerrero Law Firm. During his many years of legal practice, Atty. Guerrero has served as an immigration legal expert witness in the New Jersey State court system, taught complex immigration law at the City University of New York, and represented thousands of clients in a wide range of immigration and nationality matters. You may contact Atty. Guerrero directly at (212) 481-2744 or e-mail him at rio@guerrerolawfirm.com. The above information is not, nor intended to be, legal advice. Nothing within this publication creates an attorney-client relationship with the reader. Applicability of the legal principles discussed above differs upon individual facts and circumstances.