

USCIS just announced that the Fiscal Year (FY) 2010 H-1B cap was reached on December 21, 2009. Each year USCIS is authorized to issue 85,000 new H-1B approvals (20,000 reserved for advanced degree graduates of U.S. universities; 65,000 for all other degreed professionals). The quota is released on October 1, although employers can begin filing H-1B petitions on April 1.

This year, cap petitions received after December 21 will be rejected and returned. USCIS will apply a computer-generated random selection process to all petitions that are subject to the cap and were received on December 21, 2009.

USCIS will continue to accept H-1B petitions that are not subject to the annual quota. This includes:

- Amended H-1B petitions and petitions for an extension of H-1B employment;
- Filings for concurrent H-1B employment where the employee is already working with another H-1B employer;
- Change of employer for an existing H-1B worker;
- H-1B petitions filed by an institution of higher education or a related or affiliated nonprofit entity;
- H-1B petitions filed by nonprofit research organizations or governmental research organizations; and
- H-1B petitions for employees who have previously held H-1B status, but used less than the six-year maximum duration of H-1B employment.

A petition for H-1B employment that is not subject to the cap may be filed at any time up to six months before the prospective employment start date. Petitions for extension of H-1B employment with the same employer can be filed up to 6 months prior to the H-1B expiration date.