

Update on H-1B Visa Category
April 4, 2006

Each fiscal year, U.S. Citizenship & Immigration Services (USCIS) may approve up to 65,000 new H-1B nonimmigrant petitions for professionals working in a “specialty occupation.” Holders of advanced degrees from U.S. colleges and universities (Master’s degree or higher) are subject to a separate cap of 20,000 H-1B visa numbers per fiscal year.

USCIS accepts H-1B petitions up to six months in advance of the requested start date. This means that employers may submit petitions as early as April 1, 2006 for positions commencing on October 1, 2006, the first date of Fiscal Year 2007 (FY2007). In recent years, the maximum number of H-1B petitions, or “cap,” has been reached well in advance of the start of the fiscal year on October 1. For Fiscal Year 2006, the cap was reached on August 10, 2005. **We anticipate that H-1B numbers will be exhausted quickly for FY2007 and encourage all clients wishing to file new H-1B petitions to contact our office as soon as possible to commence processing of cases. Once the cap is reached, no new H-1B visa numbers will be available until October 1, 2007.**

It is important to note that not all non-immigrants are subject to the H-1B cap, including:

- Those who currently hold H-1B status and seek to apply for an extension of H-1B status with a current employer or a transfer of H-1B status to another employer;
- Those who seek H-1B employment with a U.S. college or university or a related/affiliated non-profit entity are generally exempt from the cap;
- Those who seek H-1B employment with nonprofit research organizations¹ or governmental research organizations are exempt from the cap; and
- Foreign medical graduates whose H-1B employment will take place in a medically underserved area of the United States in service of a J-1 visa waiver commitment.

If you have further questions about H-1B visa status, please contact your McCandlish Holton immigration attorney.

¹ Note that not *all* non-profit employers are exempt from the H-1B cap: Only those non-profits that are affiliated with an institution of higher learning and/or non-profit *research* organizations qualify for cap exemption.