

USCIS Announces H-1B “Cap” Reached for Fiscal Year 2007

June 5, 2006

Each fiscal year, U.S. Citizenship & Immigration Services (USCIS) may approve up to 85,000¹ new H-1B nonimmigrant petitions for professionals working in a “specialty occupation.” Of this 85,000, 20,000 are reserved for individuals with a U.S. advanced degree. The other 65,000 are available to other qualifying applicants. In recent years, the 65,000 quota has been reached well in advance of the start of the fiscal year on October 1.

The quota for Fiscal Year 2007 (FY2007) which runs from October 1, 2006 through September 30, 2007, was reached on May 26, 2006. Properly filed H-1B petitions received before that date are approvable for employment start dates of October 1, 2006. H-1B petitions received *on* May 26, 2006 will be subject to a computer generated random selection process under which some petitions received that day may be approved and others will be rejected.

Workers seeking new H-1B employment who have not yet filed H-1B petitions will be unable to obtain H-1B status until the start of the next fiscal year on October 1, 2007 (although employers may submit petitions on their behalf as early as April 1, 2007).

Certain H-1B non-immigrants are **not** 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 hold a Master’s degree (or higher degree) from a U.S. institution. Holders of U.S. advanced degrees are subject to a separate cap of 20,000 H-1B visa numbers per fiscal year that has not yet been reached;
- 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 organizations² 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.

¹ Under the United States’ Free Trade Agreements with Chile and Singapore, 6,800 of the 65,000 available H-1B visas are set aside each fiscal year for nationals of those two countries, thus leaving 58,200 total H-1B visa numbers for use by others. However, because 6,100 of these numbers were not used in FY2006, USCIS added those numbers to the cap for FY2007 so that that the total number of H-1B visas available to non-Chile/Singapore nationals was 64,300 for FY2007.

² 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.

Unless an H-1B beneficiary falls into one of the exempt categories described above, s/he will not be able to obtain H-1B status until October 1, 2007, the start of FY2007. Such beneficiaries are encouraged to apply as soon as possible on or after April 1, 2007 in order to maximize the chance of securing H-1B status before the cap is reached for FY2007.

The limited availability of H-1B status poses obvious hardships to foreign nationals seeking employment in professional occupations and to the businesses that require their services. Congress is currently considering legislation that would increase the number of H-1B visas available each fiscal year. It remains to be seen whether the bill as currently drafted will be enacted into law. McCandlish Holton will continue to track the legislation and post updates as indicated.

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