



INITIATE CAP-SUBJECT H-1B PETITIONS NOW FOR APRIL 1st FILING

In just 39 days, U.S. Citizenship & Immigration Services (CIS) will start accepting H-1B petitions subject to the fiscal year (FY) 2014 H-1B cap. About two weeks of this time will be used to obtain Labor Condition Application (LCA) certification and prepare and execute the H-1B petition for filing. Because of the lead-time involved, employers should initiate all new H-1B cases as soon as possible in order to file for CIS receipt on April 1st, the very first day that new H-1B petitions will be accepted.

Employers Should Initiate New H-1B Petitions Now

The CIS will not accept new H-1B petitions before April 1, 2013, which is the Monday following Easter holiday weekend. With the holiday weekend encroaching on one or more extra work days in preparation for H-1B petition filing, employers should plan for all cases to be completed before the holiday weekend, to allow for courier submission with a delivery date of April 1st.

Employers should also remember the unavoidable lead-time required for filing an H-1B petition. Before an H-1B petition can be filed, a Labor Condition Application (LCA) must be filed with, and certified by, the U.S. Department of Labor (DOL). The DOL currently takes approximately 5-7 *business* days to certify an LCA. Additionally, smaller companies or companies that have recently undergone a change in corporate formation or structure may find that it takes longer to obtain DOL certification of an LCA, due to the DOL policy requiring prior verification of the employer's existence and Federal Employer Identification Number (FEIN) before an LCA can be certified. Because of the unavoidable lead-time for filing an H-1B petition, employers are encouraged to initiate new H-1B petitions now for all known candidates.

New H-1B Candidates

Employers should identify all potential new H-1B candidates and initiate new H-1B cases as quickly as possible in order to file all new H-1B petitions on the first day the CIS accepts filings. The most likely new H-1B candidates include:

- 1) F-1 students, even if they have several months or more remaining on their F-1 Optional Practical Training (OPT) Employment Authorization Document (EAD) cards;
- 2) individuals who hold L-1B status but are pursuing or will pursue the permanent residency process;
- 3) new-hire candidates living and residing abroad who have not recently held H-1B status; and
- 4) current H-1B holders who are employed with a cap-exempt institution but will be changing employment to an institution that is not cap-exempt.

The Breakdown of "Regular" & "Masters" Caps

The Regular H-1B cap (the numerical limit on new H-1B petitions) for FY 2014 (October 1, 2013 through September 30, 2014) is 65,000. Of this number, up to 6,800 will be set aside for nationals of Singapore and Chile, leaving only approximately 58,200 numbers remaining for other nationalities.

The first 20,000 H-1B petitions filed on behalf of individuals with U.S. master's degrees or higher are exempt from the Regular H-1B cap. This 20,000 forms the "Master's cap". If the Master's cap is reached before the Regular cap, Master's cap cases will be considered under the Regular cap until the Regular cap is reached.

The "Lottery"

If the H-1B cap is reached on the first day that petitions are accepted for filing, the CIS will continue to accept petitions for a full five business days. The CIS will then randomly select (by "lottery") the appropriate number of petitions from all cap-subject H-1B petitions received during that five-day period. Any petitions not accepted will be returned, along with filing fees.

If the cap is not reached on the first day of filing, the lottery will be applied to filings received on the day the CIS determines it has received more petitions than it can accept. The CIS will randomly select the appropriate number of petitions received on that "final receipt date" for acceptance and adjudication under the cap. Any petitions not accepted will be returned, along with filing fees.

Cap-Exempt H-1B Petitions

Certain petitions are "cap-exempt," if the beneficiary will work at: 1) an institution of higher education or related or affiliated nonprofit entity; 2) a nonprofit research organization; or 3) a governmental research organization. Petitions for H-1B extension of status or change of employer are generally not subject to the H-1B cap.

H-1B Cap Timing

Last year, FY-2013 H-1B cap numbers were exhausted on June 11, 2012, well before the beginning of the fiscal year on October 1st. With an improving economy it is expected that both the Regular and Master's cap numbers will be exhausted even earlier this year. It is even possible that the CIS could receive a sufficient number of H-1B petitions within the very first week of April to reach the H-1B numerical cap. This has occurred in years past, prior to the most recent economic downturn.

To maximize the opportunity for allocation of one of the limited FY-2014 H-1B numbers available, contact your FosterQuan immigration attorney as soon as possible to initiate new H-1B petitions for all known new H-1B candidates. Your FosterQuan attorney can assist you in identifying those H-1B candidates among your workforce for whom an H-1B petition is required this year in order to avoid a gap in employment authorization. For additional information, or to find contact information for FosterQuan immigration attorneys, visit the FosterQuan website at www.fosterquan.com.