



1. H-1B Filing Season Rapidly Approaches - USCIS to Accept H-1B Petitions for Fiscal Year 2013 on April 2nd, 2012

U.S. Citizenship & Immigration Services (CIS) will start accepting H-1B petitions subject to the fiscal year (FY) 2013 cap on Monday, April 2, 2012 (as April 1st is a Sunday). Cases will be considered accepted on the date CIS receives a properly filed petition; not the date that the petition is postmarked. The start date for the H-1B petitions will be October 1, 2012.

The cap (the numerical limit on H-1B petitions) for FY 2013 is 65,000. Of the 65,000 yearly numbers, 6,800 are allocated for nationals of Singapore and Chile, leaving only approximately 58,200 numbers per fiscal year. The first 20,000 H-1B petitions filed on behalf of individuals with U.S. master's degrees or higher are exempt from the H-1B cap. If CIS receives more petitions than it can accept, CIS will randomly select the number of petitions received on the day the cap is reached for final inclusion within the cap. CIS will reject petitions that are subject to the cap and are not selected, as well as petitions received after it has the necessary number of petitions needed to meet the cap. If the H-1 B cap is reached on the first day, USCIS will continue to accept petition for five business days and will randomly select from all petitions received during that time.

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. Employers are advised to file H-1B petitions as early as possible for all known candidates even if they currently hold F-1 Optional Practical Training (OPT) employment authorization.

This past fiscal year H-1B cap numbers were exhausted on November 23, 2011. With the potential for an improving economy, it is expected that the numbers will be exhausted faster this year along with an increase in H-1B filings on April 2, 2012. For further advice on filing an H-1B petition, please contact your FosterQuan immigration attorney.

2. Greater Scrutiny on Professional Immigration in France, Blue Card Directive to Attract Skilled Workers

A French government circular of May 31, 2011 instructed the labor authorities to apply greater scrutiny in adjudicating work permits and to interpret the regulations restrictively, with the aim of reducing the number of foreign nationals being admitted to France for professional purposes. On a separate and more positive note, France has recently created a new immigration category by implementing the European Union (EU) Blue Card directive to attract skilled workers from third countries and facilitate the mobility and permanent residence of such workers within the EU. Details of these developments are provided below:

- a. Heightened Scrutiny of Employer and Employment. Under the government circular, the labor authorities have been instructed to deepen the scrutiny with which they verify the existence of the employer and its past and present compliance with the labor, social security, and immigration regulations. Any violations may be sufficient grounds to deny a work permit application.
- b. Greater Scrutiny of Change-of-Status Applications. The circular also urges the French labour authorities to examine any request for a change of immigration status more carefully, especially when the applications are made by foreign students. The circular states that foreign students must return to their home countries after the end of the schooling.
- c. Implementation of the Blue Card Permit. The Blue Card permit is issued without labor market testing, and allows for the individual beneficiary and spouse to qualify for the European Union (EU) long-term resident permit after five years of residence under the Blue Card in the EU, of which only the last two years must be in France.

The Blue Card may also be issued to third-country nationals who already hold a Blue Card issued by another member state and would like to accept employment in France. In this instance, an individual is eligible after 18 months of residence under the initial Blue Card. An application is then filed by the individual within one month of arrival in France. A qualifying third-country national is issued a joint residence and work permit for the length of employment, with a maximum validity of up to three years. This permit is renewable, and an accompanying spouse is issued a "Private and Family Life" category work permit, which can also be renewed annually for as long as the main applicant has a valid Blue Card permit.

As always FosterQuan will continue to monitor global immigration regulations and procedures and will provide additional information in future Immigration Updates©, and on our firm's website at www.fosterquan.com.