



EMAIL BULLETIN

U.S. CIS CLARIFIES PROCEDURES FOR THE H-1B NONIMMIGRANT VISA “LOTTERY”

17 April 2007

CIS Also Addresses Premium Processing and the Significance of H-1B Receipt Notices Issued before and after the Numeric Selection Process on April 12, 2007

The U.S. CIS announced on April 3, 2007 that enough H-1B petitions had been received on April 2, 2007 to exhaust the H-1B Quota for Fiscal Year 2008. CIS regulations provide that, when the quota is reached on the first day that petitions are accepted, as happened in this case, the CIS will apply a random numeric selection process, or “lottery”, in order to allocate H-1B numbers to those petitions received by the CIS on the first and second day that petitions are accepted for the new Fiscal Year. This means that FY 2008 cap-subject H-1B petitions received by the CIS on April 2, or April 3, 2007 are subject to a random numeric selection process for the allocation of H-1B numbers.

The CIS estimates that 123,480 cap-subject H-1B petitions were received. According to the CIS, these petitions were labeled with unique numeric identifiers, and petitions were selected randomly by computer for allocation of an H-1B number on April 12, 2007. Petitions selected on April 12, 2007 will receive a Receipt Notice; petitions not selected will be returned with filing fee checks enclosed.

Receipt Notices

Some petitioners received Receipt Notices prior to the CIS lottery on April 12, 2007. The CIS advised that these Receipt Notices do not mean that an H-1B visa number has been allocated. Only Receipt Notices dated after the April 12th lottery are evidence that the petition has been allocated an H-1B number under the FY 2008 cap.

Premium Processing

The CIS has also announced a change in the application of the “premium processing” 15-day action guarantee. The CIS tolled the 15-day clock for taking action on premium processed petitions in order to allow time for sorting, data entry, and application of the random numeric selection process. The CIS reports that action will be taken on the selected petitions within 15 days of April 12, 2007, the date petitions were selected in the lottery for H-1B visa allocation. Therefore, petitions filed with a request

for premium processing should receive action by April 27, 2007, or the petitioner may seek a return of the \$1,000 premium processing filing fee.

Early Approvals

The CIS has also addressed the fact that several petitioners that filed petitions requesting premium processing received Approval Notices prior to the application of the numeric selection process on April 12, 2007. The CIS has advised that petitioners and beneficiaries should not rely on these early Approval Notices. Approvals issued prior to the lottery are not definitive unless they were issued for Advanced Degree Exempt premium processed petitions allocated one of the 20,000 Advanced Degree Exempt H-1B visa numbers.

If you have received a Notice from the CIS in connection with a cap-subject H-1B petition and require further clarification of the significance of the notice, please contact your Tindall & Foster, P.C. immigration attorney. As further information becomes available from the CIS regarding the process of allocating and awarding H-1B visa numbers, and the issuance of Receipt Notices and Approval Notices, Tindall & Foster will make this information available via our web site at <http://www.tindallfoster.com/ExportedSite/ImmigrationResources/Immigration%20Resources.htm>.