



EMAIL BULLETIN

**U.S. CITIZENSHIP & IMMIGRATION SERVICES (CIS) ANNOUNCES THAT THE FY-2008 H-1B CAP HAS BEEN REACHED**

*3 April 2007*

**H-1B Extension Petitions Are Not Impacted; H-1B Numbers Remain Available for Chileans and Singaporeans**

As predicted, and prepared for, in recent Tindall & Foster, P.C. Email Bulletins and client notifications, the H-1B cap has been reached in record time this year, on the first day that petitions were accepted by the CIS for the 2008 Fiscal Year.

On April 3, 2007, U.S. Citizenship & Immigration Services (CIS) announced that the CIS had received enough H-1B petitions on April 2, 2007 to exhaust the H-1B Cap for Fiscal Year 2008 (October 1, 2007 through September 30, 2008). It is unclear how many of the petitions received would qualify for one of the 20,000 numbers reserved for candidates holding Masters or higher level degrees awarded by a U.S. college or university. It is conceivable that all 20,000 exempt numbers have also already been exhausted for FY-2008. The CIS Press Release may be viewed via the Tindall & Foster, P.C. web site at

<http://www.tindallfoster.com/ExportedSite/ImmigrationResources/immigrationinthenews/2008H1BCapReached.pdf>.

The H-1B visa quota for each fiscal year is 65,000. However, of this number, 6,800 are set aside for citizens of Chile and Singapore. Therefore, the effective cap for all other nationalities is 58,200. The CIS Press Release dated April 3, 2007 indicates that, on the first day that the CIS accepted FY-2008 H-1B petitions, more than 150,000 cap subject petitions were received. Despite receiving enough petitions on the first day, April 2, 2007, the CIS has announced that petitions received on April 3, 2007 will be placed in the random lottery system for visa allocation along with petitions received on April 2, 2007, which accords with CIS regulations concerning H-1B visa allocation.

The CIS has also announced that the “final receipt date for cap-subject cases is April 2, 2007,” although petitions received on April 3 will also receive the benefit of entry into the lottery system. Petitions received on April 2 or April 3 will be subject to a random selection process. Petitions not selected for allocation of an H-1B number in the random selection process will be returned along with the CIS filing fees. Petitions

received on or after April 4, 2007 will also be rejected and returned with the CIS filing fees.

H-1B visa numbers remain available for citizens of Chile and Singapore, for whom U.S. trade agreements set aside 6,800 total numbers per Fiscal Year. **Additionally, the following types of H-1B petitions are not subject to the annual H-1B cap and may be filed without numerical limitation:**

- 1. H-1B Petition Extensions for existing H-1B employees**
- 2. H-1B Change of Employer petitions for candidates holding H-1B status and seeking to change employers**
- 3. H-1B Petitions on behalf of employees of institutions of higher education**
- 4. H-1B Petitions on behalf of employees of Nonprofit Organizations affiliated with institutions of higher education**
- 5. H-1B Petitions on behalf of employees of Nonprofit Research Organizations or Governmental Research Organizations**
- 6. H-1B Petitions on behalf of candidates who were previously granted H-1B status in the past six years and have not left the United States for more than one year after attaining H-1B status**

Employers seeking to utilize the H-1B program to fill critical professional positions on a temporary basis may wish to consider contacting Congress to lobby for H-1B visa numbers sufficient to meet the demands of a growing economy. Various legislative proposals in both the U.S. House and the U.S. Senate include provisions for an increase in the annual H-1B visa quota from 65,000 to 115,000 or more. It is possible, perhaps even somewhat likely, that Congress could vote before the end of the year on comprehensive immigration reform, which could include a significant increase in H-1B numbers, effective beginning as early as the present Fiscal Year. Employers are encouraged to visit the advocacy section of the Tindall & Foster, P.C. web site at <http://www.tindallfoster.com/ExportedSite/ImmigrationResources/Write%20Your%20Congressman.htm> to voice support for additional H-1B numbers to meet the needs of a growing economy. *Please note:* Due to security concerns and the lengthy process of screening paper mail for anthrax prior to delivery to members of Congress, both the Senate and House prefer facsimiles or electronic correspondence, as made possible through the web site link.

For more information concerning the H-1B cap and cap-exempt cases, contact your Tindall & Foster Immigration Attorney. Your Tindall & Foster Immigration Attorney will be happy to assist you in determining whether a beneficiary may be exempt

from the cap, in developing an appropriate case strategy for case preparation and filing, and in collecting the information and documentation needed to facilitate filing for H-1B cap-exempt cases.

Your Tindall & Foster attorney will also be happy to work with you to tailor an appropriate letter that expresses your company's position on issues of concern for the future of your business, such as the annual H-1B quota. As always, Tindall & Foster will continue to monitor the progress of legislative proposals and will make future updates available in Email Bulletins and on our web site at <http://www.tindallfoster.com>.