



EMAIL BULLETIN

U.S. CITIZENSHIP & IMMIGRATION SERVICES (CIS) ANNOUNCES THAT THE FISCAL YEAR 2007 H-1B ADVANCE DEGREE EXEMPTION CAP HAS BEEN REACHED

Contact Congress Now to Lobby or H-1B Cap Relief!

31, July 2006

On July 28, 2006, the CIS announced that, as of July 26, 2006, the Fiscal Year 2007 H-1B Advance Degree Exemption Cap had been reached.

The CIS has also announced that the final receipt date for cap-subject cases is to be Wednesday, July 26, 2006. Petitions received on July 26 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 after July 26, 2006 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.

Some H-1B Petitions Are Not Subject to the H-1B Cap

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

Lobby Congress for H-1B Cap Relief to Sustain Growing Economy

Absent Congressional action resulting in the passage of new legislation, no new petitions for Fiscal Year 2007 H-1B numbers may be filed (except for Chileans and Singaporeans) **prior to April 1, 2007. Such petitions may request a start date no earlier than October 1, 2007**, under the Fiscal Year 2008 (October 1, 2007 through September 30, 2008) H-1B cap.

While the U.S. Senate has proposed an increase in H-1B numbers, the measure is part of a larger, more comprehensive bill that faces stiff opposition in the U.S. House of Representatives, which has passed a competing, enforcement-only bill. Employers are encouraged to visit the advocacy section of the American Immigration Lawyers' Association (AILA) web site at <http://capwiz.com/aila2/issues/bills/?bill=8298361> to utilize templates for voicing opposition to the enforcement-only House bill, H.R. 4437, and support for the Senate Compromise bill that includes a provision for additional H-1B numbers each Fiscal Year. *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 fax or electronic correspondence as made possible through the above-linked AILA site.

Alternatives to H-1B Classification

While the H-1B cap for Fiscal Year 2007 has been reached for all but Chileans and Singaporeans, many times candidates for H-1B classification potentially qualify under one or more alternative nonimmigrant classifications. The following classifications remain available without numerical limitation for qualifying candidates to fill qualifying positions:

The H-3 visa category may be used for the temporary training of qualified foreign nationals in the United States pursuant to a detailed, established training program.

The L-1 category is for international transferees who have worked with a company abroad for at least a year and are being transferred to the United States to continue working with an affiliate, parent, subsidiary or branch office of the company in the United States. Employment must have been and must continue to be in a managerial, executive, or specialized knowledge capacity.

The E-1 and E-2 Treaty Trader and Treaty Investor categories may be used for employing qualified personnel with companies in the United States where the company maintains the nationality of a country with which the United States has entered into an applicable trade or investment treaty. Generally, the prospective employee must be coming to

engage in employment with the company as a managerial, executive, or essential employee with the company in order to qualify.

Under very limited, short-term circumstances in which a foreign national will remain on a foreign payroll and meet other strict criteria when coming to the United States, the B-1 visa may be an appropriate option in lieu of the H-1B visa. Your Tindall & Foster immigration attorney can assist you in determining whether the B-1 visa may be an appropriate alternative in particular cases.

Contact Your Tindall & Foster Immigration Attorney for Alternatives

For more information concerning the H-1B cap and cap-exempt cases, contact your Tindall & Foster Immigration Attorney. Your Tindall & Foster 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 able to assist you in considering other possible alternatives to H-1B classification for appropriately qualified candidates to fill qualifying positions.

Your Tindall & Foster attorney will also be happy to work with you to formulate 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 www.tindallfoster.com.