



Questions and Answers

March 19, 2008

USCIS ANNOUNCES INTERIM RULE ON H-1B VISAS

Rule Modifies Petition Selection Process and Prohibits Multiple Filings

What is the H-1B visa program?

The H-1B visa program is used by U.S. businesses to employ foreign workers in occupations that require theoretical and practical application of highly specialized knowledge and a bachelor's degree or higher (or its equivalent), such as scientists, engineers, or computer programmers.

What is the purpose of the new rule?

The overall goal of the new rule is to promote equal opportunity for prospective petitioners seeking visas for H-1B workers.

What are the specific modifications under the new rule?

1. USCIS will now either deny or revoke multiple petitions filed by an employer for the same H-1B worker.
2. USCIS will not refund filing fees for duplicative or multiple H-1B petitions.
3. In years when USCIS implements the random selection process for petitions, USCIS will include petitions in the random selection process that are filed during the first five business days available for filing H-1B petitions for a given fiscal year, rather than just the first two such days.
4. If a petition incorrectly indicates that it is exempt from any of the H-1B numerical limits, the petition will be denied if no H-1B visa numbers are available and the filing fees will not be returned.

Do the new rules referencing multiple filings on behalf of one worker apply to a parent company and its affiliated entities?

The rule does not prevent related employers (such as a parent company and its subsidiary) from filing petitions on behalf of the same alien for different positions, based on legitimate business need.

How long did it take for the prior FY2008 congressionally mandated H-1B caps to be reached?

April 2, 2007 was the first day H-1B petitions could be received for Fiscal Year 2008. On that day USCIS received enough petitions to fill the 65,000 cap for Fiscal Year 2008. On April 30, 2007, USCIS received enough petitions to fill the 20,000 advanced degree cap.

What are the FY2009 congressionally mandated H-1B caps?

By law, the congressionally mandated cap is 65,000 for new H-1B visas per fiscal year, subject to certain limited exceptions. The advanced degree exemption is 20,000 H-1B visas.

(more)

When can employers file an H-1B petition for fiscal year 2009?

April 1, 2008 is the first day petitions may be received for an October 1, 2008 start date.

What happens when the cap is reached?

When it is determined that the numerical limitations have been reached, USCIS employs a random selection process to choose among the petitions received on the “final receipt date.” If the “final receipt date” falls within any one of the first five business days, the random selection will be run using all the cap-subject petitions received during those five days.

If the limits are reached during that period:

- 20,000 Reached - USCIS randomly selects from these petitions ahead of selection for the 65,000 limit.
- Over 20,000 Not Selected - Considered with other H-1B petitions in the random selection for the 65,000 limit.
- Under 20,000 – Ongoing approvals counted toward the 20,000 cap until the limit is reached.

If DHS finds out that an employer is filing multiple petitions for the same potential employee, will DHS disqualify that employer entirely?

No. USCIS will deny all petitions filed by an employer for the same H-1B worker if more than one is filing is discovered. If duplicate or multiple petitions are discovered after one or more such petitions were approved, USCIS will revoke these petitions.