



Frequently Asked Questions Regarding FY-2019 H-1B Season

- **What's the earliest date a new H-1B petition can be filed?**

The CIS normally accepts petition on April 1st of every year, however this year April 1st falls on a Saturday, so the CIS will accept new H-1B petitions received on Monday April 2, 2018. New H-1B petitions received earlier than April 2nd will be rejected.

- **What are the Regular cap and the Master's cap?**

The Regular H-1B cap (the numerical limit on new H-1B petitions) for FY 2019 (October 1, 2018 through September 30, 2019) is 65,000. Of this number, up to 6,800 may be set aside for nationals of Singapore and Chile for H-1B1 visas.

The first 20,000 H-1B petitions filed on behalf of individuals with U.S. master's degrees (or higher U.S. degrees) are exempt from the Regular H-1B cap. These 20,000 constitute the "Master's cap." If the Master's cap is reached before the Regular cap, Master's cap cases will be entered under the Regular cap.

- **If the cap is reached in the first week of filing, which petitions will be entered into the "lottery" for an H-1B number?**

If the H-1B cap is reached during the first five business days that filings are accepted (April 2 – 6, 2018), all petitions received on or before April 6th will be entered into the "lottery." The Master's cap lottery will be applied first. Any Master's cap cases that are not selected in the initial lottery will be entered into the regular lottery.

- **Which H-1B petitions are counted against the H-1B cap?**

Only "new" H-1B petitions are counted against the H-1B cap. Those who are currently in H-1B status and have been counted against the H-1B cap, or who previously held H-1B in the past 6 years with a cap subject employer are not counted against the cap and can apply for H-1B extensions or new H-1B employment at any time. Also, 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.

- **For whom should we consider filing H-1B petitions this year?**

Employers should identify all potential new H-1B candidates and initiate new H-1B cases as quickly as possible. The most likely new H-1B candidates include:

- 1) F-1 students, even if they have several months or more remaining on their F-1 Optional Practical Training (OPT) Employment Authorization Document (EAD) cards;
- 2) L-1B employees who are pursuing, or will pursue, the permanent residency process; L-2, H-4, and E spouse EAD holders working in professional occupations that require bachelor's degree;
- 3) New-hire candidates living and residing abroad who have not recently held H-1B status; and
- 4) Current H-1B holders who are employed with a cap-exempt institution but will be changing employment to a company or entity that is not cap-exempt.

- **How far in advance must I initiate new H-1B cases?**

Before an H-1B petition can be filed with U.S. CIS, a Labor Condition Application (LCA) must be filed with and certified by the U.S. Department of Labor (DOL). The DOL normally takes approximately 5-7 business days to certify an LCA; therefore, the minimum lead-time to prepare and file an H-1B petition is about 2 weeks.

If your company has never filed an H-1B petition before, or if your company has undergone reorganization or has received a new Federal Employer Identification Number (FEIN) since the last H-1B petition was filed, please note that it will likely be necessary to obtain "clearance" of the company's FEIN with the DOL before the DOL will permit an LCA filing. The FEIN clearance process can take several business days. The FEIN clearance procedure adds approximately 1-2 weeks to the lead-time for filing an H-1B petition.

Because of the high volume of case initiations anticipated in the weeks leading up to the April 2nd filing date, employers should initiate new H-1B petitions as early as possible. Contact your Foster immigration attorney as soon as you have identified one or more H-1B candidates.

- **What are the requirements for H-1B classification?**

The H-1B classification is limited to those workers who will be employed in a "specialty occupation" in the United States. The position generally must be one that normally requires a bachelor's degree or its equivalent in a specialty field, and the H-1B candidate must hold the applicable bachelor's degree or its equivalent in the specialty field. Candidates who do not have a formal degree often may substitute three years of professional work experience for each academic year missing toward a bachelor's degree. If an H-1B candidate will qualify based on a degree equivalency, additional time may be needed to secure the appropriate evaluation of his or her professional experience.

- **What documents and information are required?**

The H-1B petitioner must document that there will be an employer-employee relationship with the beneficiary and must demonstrate that the position qualifies as a “specialty occupation.” The beneficiary must document his or her qualifications by providing copies of degrees and/or transcripts and employment verification letters when required to demonstrate professional experience in lieu of a degree. Your Foster immigration attorney will provide additional, case-specific checklists which may be applicable on a case-by-case basis.