



August 12, 2005

Press Release

USCIS REACHES H-1B CAP

Washington, D.C.– U.S. Citizenship and Immigration Services (USCIS) announced today that it has received enough H-1B petitions to meet the congressionally mandated cap for fiscal year 2006. USCIS has determined that the “final receipt date” is August 10, 2005. Any petitions received on that date will be subject to the random selection process described below. USCIS will reject any petitions that are subject to the FY 2006 annual cap and received after the “final receipt date.” Additional information regarding the specific number of H-1B petitions processed is available at: <http://uscis.gov/graphics/services/tempbenefits/cap.htm>.

Cap and Set Asides. Congress has established an annual H-1B cap of 65,000. Of that number, 6,800 are set aside for the H-1B1 program under terms of the U.S.-Chile and U.S.-Singapore Free Trade Agreements. The total H-1B cap number available for FY 2006 is therefore 58,200. The law provides that any of the unused Chile/Singapore numbers be reallocated back to the FY 2006 H-1B cap. These unused numbers will be made available on October 1, 2006, the start of FY 2007. The law authorizes USCIS to make such unused numbers available within the first 45 days of FY 2007 to aliens who had applied for such visas during FY 2006. At that time, USCIS will announce how many Chile/Singapore numbers went unused and can be reallocated. USCIS will announce the process for distributing any reallocated numbers in a future press release.

Cap Procedures. USCIS has implemented the following process for FY 2006 H-1B filings in accordance with the procedures announced in the [Federal Register at 70 FR 23775](#) (Allocation of Additional H-1B Visas Created by the H-1B Visa Reform Act of 2004):

- USCIS has closely monitored FY2006 H-1B filings and used projections to determine the number of petitions necessary to reach the congressionally mandated cap.
- Having determined that the numerical limits have been exceeded, USCIS will identify those H-1B petitions seeking an FY 2006 number that were received on the date that USCIS received the number of petitions necessary to meet the cap (the “final receipt date”).
- For petitions received on the “final receipt date,” USCIS will apply a computer-generated random selection process. This process will randomly select the exact number of petitions from the day’s receipts needed to meet the congressionally mandated cap.
- After random selection, any remaining H-1B petitions that do not receive an FY 2006 number and are not otherwise exempt will be rejected and returned along with the filing fee(s).
- Petitioners may re-submit their petitions when H-1B visas become available for FY 2007.
- The earliest date for which a petitioner may file a petition requesting FY 2007 H-1B employment with an employment start date of October 1, 2006, is April 1, 2006.

(more)

Current H-1B Workers. Petitions for current H-1B workers do not count towards the congressionally mandated H-1B cap. Accordingly, USCIS will continue to process petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States.
- Change the terms of employment for current H-1B workers.
- Allow current H-1B workers to change employers.
- Allow current H-1B workers to work concurrently in a second H-1B position.

Cap-Exempt Petitions. As directed by the H-1B Visa Reform Act of 2004, USCIS treats as exempt from the cap for any fiscal year the first 20,000 H-1B petitions reflecting an alien beneficiary with a U.S.-earned master's or higher degree. For FY 2005 and 2006 USCIS has now received approximately 10,000 and 8,000 of such petitions, respectively. USCIS also notes that petitions for new H-1B employment are not subject to the annual cap at all if the alien will be employed at an institution of higher education or a related or affiliated nonprofit entity, or at a nonprofit research organization or a governmental research organization. Thus, petitions for these exempt H-1B categories may still be filed for work start dates in FY 2005 or 2006.

H-1B in General. The H-1B visa program is utilized by some U.S. businesses to employ foreign workers in specialty occupations that require theoretical or technical expertise in a specialized field, such as scientists, engineers, or computer programmers. As part of the H-1B program, the Department of Homeland Security (DHS) requires U.S. employers to meet specific labor conditions to ensure that American workers are not adversely impacted, while the Department of Labor's Wage and Hour Division safeguards the treatment and compensation of H-1B workers.

– USCIS –

On March 1, 2003, U.S. Citizenship and Immigration Services became one of three legacy INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing our nation's security.