

Immigration Alert

H-1B Cap Hit for Fiscal Year 2016

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On April 7, 2015, US Citizenship and Immigration Services (USCIS) announced that it has received more than enough H-1B petitions to meet the numerical limit for fiscal year 2016 cap-subject H-1B visas, which includes both the 65,000 general H-1B cap petitions as well as the 20,000 US master's degree H-1B petitions filed on behalf of individuals with US advanced degrees. This is the third year in a row that the cap was reached in the first five business days, triggering a lottery.

USCIS indicates it will soon begin executing the computer-generated random selection process for all cap-subject petitions received. First, USCIS will determine which US master's degree cases will be randomly selected toward the 20,000 limit. Once that is determined, the remainder of the US master's degree cases will be added to the pool of general H-1B cap petitions, and USCIS will execute the second random selection process to determine which cases are accepted toward the more general 65,000 limit. Only those cases that win the lottery will receive a receipt from USCIS. All other cases will be returned with their filing fees.

USCIS has not yet provided a timeline for the selection process to be completed. In previous years, this process has been completed in approximately 5 to 10 business days. When the selection process is completed, USCIS will enter the accepted petitions into its system and generate the receipt notices for the accepted petitions.

USCIS has also temporarily adjusted its current premium processing practice. To facilitate the prioritized data entry of cap-subject petitions requesting premium processing, USCIS has announced that premium processing for cap-subject H-1B petitions, including H-1B petitions seeking an exemption from the fiscal year cap for individuals who have earned a US master's degree or higher, will begin no later than April 28, 2015.

Despite the quota being filled, USCIS will continue to accept and process H-1B petitions exempted from the H-1B cap, DOD cooperative research worker petitions, and Chile/Singapore H-1B1 petitions. USCIS will also accept H-1B petitions that seek to:

- Extend the stay of a current H-1B employee;
- Change the terms of employment for an existing H-1B worker;
- Change H-1B employers; or
- Secure concurrent H-1B employment

Please contact an attorney with Mintz Levin's Immigration Practice to discuss any questions you may have about H-1B sponsorship or alternatives to the H-1B visa.



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