

H-1B CAP REACHED!

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by

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United States Citizenship and Immigration Services (USCIS) announced at 8:00 p.m. on October 1, 2004 (the first day of fiscal year 2005) that the H-1B cap has been reached. All H-1B petitions subject to the cap which are received on or before October 1, 2004 will be processed and a decision will be made. All H-1B petitions subject to the cap which are received after October 1, 2004 will be returned.

What is the H-1B cap?

The U.S. Congress set a limit of 65,000 H-1Bs for fiscal year 2005. Fiscal year 2005 runs from October 1, 2004 through September 30, 2005. Of this figure, 6,800 are received for nationals of Chile and Singapore as a result of separate free trade agreements with these countries. As a result, the actual H-1B cap is 58,200.

Which cases are not subject to the H-1B cap?

The following H-1B petitions are **NOT subject** to the H-1B cap:

- (1) Petition for brand new employment (e.g., change of jobs) for current H-1B worker;
- (2) Petition for new, concurrent employment (e.g., a 2nd H-1B job) for current H-1B worker;
- (3) Petition to extend the amount of time a current H-1B worker can stay in the U.S.
- (4) Petition to change the terms of employment for current H-1B worker
- (5) Petition for brand new employment at following type of employer:
 - Institution of higher education, or a related or affiliated non-profit entity
 - Non-Profit research organization
 - Governmental research organization

If a particular case is not subject to the H-1B cap, then the H-1B cap has no effect.

What can you do if your case is subject to the H-1B cap?

If your particular case is subject to the H-1B cap, then you cannot file your H-1B petition for the current fiscal year (unless Congress enacts legislation to provide otherwise).

Petitions for H-1b employment can be filed up to 6 months prior to the intended employment start date. Therefore, the earliest a case that is subject to the H-1B cap can be filed for the next fiscal year (October 1, 2005 though September 1, 2006) is April 1, 2005 (6 months before October 1, 2005).

Congress may consider H-1B legislation later this year

It has been rumored that Congress may consider H-1B legislation later this year (after the November 2 elections) in order to alleviate the H-1B cap problem. One possibility is that H-1B workers who have obtained master's degrees or higher in the United States will be exempt from the H-1B cap. Again, this proposal has not yet been enacted, but it is hoped that this sort of legislation will come about later this year.

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