

H-1B CAP ALREADY REACHED FOR FISCAL YEAR 2007



by

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The Congressionally-mandated cap of 65,000 H-1B visas for Fiscal Year 2007 (for employment dates October 1, 2006-September 1, 2007) was reached on May 26, 2006 (over 4 months before the start of the next fiscal year). This is the earliest date for reaching the cap. The H-1B cap for Fiscal Year 2006 was not reached until August 10, 2005. This means that, as of May 26, 2006, USCIS has received enough cap-subject H-1B petitions requesting an employment start date during Fiscal Year 2007 to reach the H-1B cap. USCIS will not accept any new H-1B petitions which are subject to the cap at this time. USCIS will continue to accept H-1B petitions which are filed for H-1B extensions, to change the employment terms of an existing H-1B worker, to allow current H-1B workers to change employers and to permit current H-1B workers to work at a second H-1B position.

For employers and individuals who are subject to the cap and have been blocked out because of the H-1B cap at this time, there are four possible avenues which may provide some relief:

- (1) New legislation adding additional H-1B numbers for Fiscal year 2007 could be passed. The comprehensive immigration reform bill (S. 2611) passed by the U.S. Senate includes a provision which would increase the H-1B cap to 115,000, and would have a mechanism for increasing the H-1B cap in future years where the H-1B cap was reached in the preceding year. However, this Senate bill has not been passed. It still must be reconciled with an immigration bill previously passed by the U.S. House of Representatives.
- (2) There are several exemptions from the H-1B cap. These exemptions cover workers who will be employed at institutions of higher education or at a non-profit institution related to or affiliated with an institution of higher education, as well as workers at nonprofit or governmental research organizations. As a result, if the employment falls under one of the exemptions from the H-1B cap, then the H-1B petition will still be accepted by USCIS.
- (3) Under the H-1B Visa Reform Act of 2004, 20,000 H-1Bs (separate from the H-1B cap of 65,000) for H-1B beneficiaries who have graduated from a U.S. institution of higher education with a master's degree or higher degree. Those graduates of U.S. universities or colleges with this type of degree are exempted from the H-1B cap.

Stay tuned to www.longchangonline.com for additional updates on H-1B news and other current immigration news.

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