

Publications

Immigration Alert: Time to Prepare for April 1 H-1B filings

Related Attorneys

David W. Cook

Robert A. Harris

Sachiyo Isoda Peterson

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At the beginning of each fiscal year, which for the federal government starts October 1, the U.S. Citizenship and Immigration Services (USCIS) makes available an allocation of new H-1B visa numbers. The number of new H-1B visas available each year is capped at approximately 65,000, plus an additional 20,000 that are exempt from the cap for individuals with advanced degrees from an accredited U.S. college or university.

The annual cap for the current fiscal year (which ends September 30, 2014) allocation of H-1B visas was reached on April 5, 2013, which was just five days after new H-1B petitions could be filed. We anticipate that the 2015 fiscal year H-1B cap will also be reached within the first week of filing. Therefore, although any new H-1B visa petition approvals issued under the FY 2015 cap cannot become effective until October 1, 2014, such petitions should be filed on April 1, 2014, which is the first day such petitions will be accepted.

Petitions that are subject to the annual cap include H-1B visa petitions that are filed for first time H-1B beneficiaries or for people who have been outside the United States for one year or more since completing any prior permissible H-1B period of stay, and are now seeking to return to the United States to begin a new period of H-1B admission.

Petitions that are **not** subject to the cap include petitions for individuals who:

- Are currently in H-1B visa status for another employer;
- Have already been counted toward the annual H-1B cap in the six-year period prior to the approval of the new petition;
- Are seeking H-1B employment at institutions of higher education or their related or affiliated nonprofit entities;
- Are employed by a nonprofit or governmental research organization; or
- Are J-1 nonimmigrant physicians who received a waiver of the two-year foreign residence requirement based on sponsorship by a state health department.

Note also that employees working pursuant to Optional Practical Training (OPT) often have work authorization that expires in the summer months, prior to the October 1 effective date of the new H-1B visas. This has become known as “cap gap.” For an employee faced with a cap gap situation, the timely filing of an H-1B visa petition will automatically extend the employee’s lawful F-1 visa status and work authorization through September 30, 2014 (unless the petition is denied prior to that date). In order to be timely filed, the H-1B visa petition must be filed on or after April 1, 2014 and prior to the expiration of the employee’s current OPT work authorization.

If you think you have a candidate for H-1B visa status who might be subject to the cap, we encourage you to contact your Vorys attorney as early as possible to discuss the preparation and filing of such petitions at the earliest possible date.