



UPDATE Immigration

April 2013

H-1B Cap Reached; Lottery Looms

On April 5, 2013, the U.S. Citizenship and Immigration Services (USCIS) announced that it received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2014.

As predicted, the USCIS received a heavy demand for the current H-1B cap. In fact, for the first time since April 2008, the H-1B cap was reached within the first five days of April, triggering the H-1B lottery. Under the lottery, all H-1B filings received over the first five days will be subject to a random lottery to determine which of these H-1B applications will be counted and included under the cap. Assuming the USCIS follows a similar procedure as conducted in April 2008, the USCIS will hold two computer-generated random lotteries:

- First, the USCIS will select 20,000 H-1B visas for those holding a U.S. master's degree or higher. The qualifying petitions not selected in this lottery will be added to the pool of remaining regular H-1B petitions.
- The USCIS will then hold a second lottery to determine which of the remaining H-1B petitions will be accepted for processing for the remaining 58,200 visas. (Up to 6,800 visas are set aside from the cap of 65,000 during each fiscal year for the H-1B1 program under the terms of the legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements.)

H-1B cases received within the first five days in April that are not selected in the lottery (and H-1B cases received after April 5) will be returned to the petitioner with an explanation that the H-1B cap has been reached and that H-1B numbers are no longer available under this year's cap. Subsequently, the USCIS will only accept and process H-1B petitions that are exempt from the cap, including in these situations:

- To extend the H-1B status of a worker who has already been counted toward a prior H-1B cap
- To change the terms of employment for a current H-1B worker or to allow a current H-1B worker to change employers (that is, an H-1B "rollover" petition)
- From certain types of employers (such as institutions of higher education and nonprofit research employers) or certain J-1 physicians who are exempt from the cap

The USCIS will begin accepting new H-1B petitions on April 1, 2014, for FY 2015 (for an employment start date of October 1, 2014).

CONTACT US

If you have any questions about the content in this legal update, contact one of the members of our Immigration Practice Group below. Robinson & Cole's Immigration Practice Group has experienced attorneys who have assisted clients with a wide range of immigration issues.

[Megan R. Naughton](#)

(860) 275-8263

mnaughton@rc.com

[Joshua S. Mirer](#)

(860) 275-8344

jmirer@rc.com

[Lauren M. Sigg](#)

(860) 275-8341

lsigg@rc.com

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