
BOND INFORMATION MEMO

Immigration Law

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H-1B Petition Filings for Fiscal Year 2015 Exceed Number of H-1B Visas Available

As expected, on Monday, April 7, 2014, the U.S. Citizenship and Immigration Services (USCIS) announced that a sufficient number of H-1B petitions had been received from April 1, 2014, through April 7, 2014, to meet the statutory cap for fiscal year 2015. The statutory cap was reached in both the general Bachelor's category, as well as the U.S. advanced-degree category. In short, more H-1B petitions were filed than the USCIS is authorized to approve for fiscal year 2015, which begins on October 1, 2014. Consequently, for the second year in a row, the USCIS will conduct a random selection process (i.e., lottery) to determine which filed H-1B petitions will be selected for processing/adjudication. The USCIS has not yet announced the date when the lottery will be held.

As background, the USCIS is only authorized to issue 85,000 H-1B approvals for each fiscal year, which includes 20,000 visas under the advanced-degree category and another 65,000 visas under the general category. The 65,000 H-1B visas are available for beneficiaries who possess at least a Bachelor's degree, with 6,800 of those available visas allocated as H-1B1 visas for qualifying nationals from Chile and Singapore. An additional 20,000 approvals are available under the U.S. advanced-degree exemption for beneficiaries with a Master's or higher degree obtained from a U.S. college or university.

Consistent with USCIS practice, the USCIS will first utilize the lottery for petitions that qualify for the advanced-degree category under which 20,000 visas are available. Eligible petitions that are not selected for processing in this category will be submitted for the general lottery under which 65,000 visas are available. Any petitions not selected in the H-1B lottery will be returned to the employer, together with any applicable filing fees.

Although the H-1B season for fiscal year 2015 appears to be complete, certain H-1B petitions are exempt from the numerical statutory cap. Therefore, qualifying employers may continue to file H-1B petitions with the USCIS for new H-1B employment with a college or university, or a nonprofit research or governmental research organization – often referred to as “cap-exempt institutions.” In addition, employers may continue to submit H-1B petitions for current workers who have previously been counted against the H-1B cap.

Finally, employers seeking to employ foreign nationals in the United States should note that there may be other non-immigrant visa categories that could be a viable alternative to the H-1B category, including (but not limited to) the TN (NAFTA Professionals), the L (Intra-Company Transferee), the E (Investor), and the O (Extraordinary Ability) categories.

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