



One Minute Memo™

H-1B Numbers - Less than Half Remain

Background

There is an annual limit on the number of H-1B petitions that can be approved during the government's 2007 fiscal year (beginning October 1, 2006 and ending September 30, 2007). The H-1B cap for fiscal year 2007 is 65,000 (of which about 6,800 are reserved for nationals of Chile and Singapore under Free Trade Agreements with those countries). U.S. Citizenship and Immigration Services (USCIS) began accepting petitions for FY 2006 as of April 1, 2006.

There is an additional quota of 20,000 H-1B's which are reserved for persons who hold a master's degree or higher awarded by a United States college or university. This additional quota of 20,000 H-1B's is not in danger of being reached at this time.

Current Status

USCIS announced on May 12th that it has received 34,808 H-1B visa petitions that are counted against the 2007 annual limit of 65,000 H-1B's. Taking into account the 6,800 visa petitions set aside under Free Trade Agreements, as of May 12th there were just over 23,000 H-1B visa numbers remaining for this fiscal year. Once the FY 2007 limit is reached, new H-1B numbers will be unavailable until October 1, 2007 (the start of the 2008 Fiscal Year). If the current pace of H-1B filings remains steady, H-1B numbers will be exhausted within the next several weeks. An accelerated filing pace (perhaps precipitated by this news) would of course exhaust the available numbers earlier.

Exceptions

With some exceptions, petitions for current H-1B workers are not subject to the annual cap. Non-cap cases include H-1B workers extending their status, changing from one H-1B employer to another, changing the terms of existing H-1B employment, or filing for a second (concurrent) H-1B position. In addition, foreign nationals seeking to work for an institution of higher education, for a related or affiliated nonprofit entity, or for a nonprofit research organization or a government research organization are not subject to the H-1B cap. For additional information on H-1B cap exemptions, visit www.immstar.com, click "Immigration Updates," and choose "Immigration News," then view "Managing the H-1B Cap" dated April 12, 2004.

Breadth. Depth. Results.

In addition to the H-1B carve-outs for nationals of Singapore and Chile, Congress has also enacted an E-3 visa classification for specialty workers who are nationals of Australia. The REAL ID Act of 2005 provides for 10,000 E-3 visas for Australian nationals. The requirements for E-3 classification mirror H-1B visa requirements.

If you have any questions concerning the H-1 B numbers, please contact the Seyfarth Shaw LLP attorney with whom you work or any Immigration attorney on our website at www.seyfarth.com.

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