



## **IMMIGRATION ALERT**



### **H-1B Visa Numbers Reaching the Limit**

#### **Background**

There is an annual limit on the number of H-1B petitions that can be approved during the government's 2006 fiscal year (beginning October 1, 2005 and ending September 30, 2006). The H-1B cap for fiscal year 2006 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, 2005.

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

#### **Current Status**

U.S. Citizenship and Immigration Services ("USCIS") announced that it has received 49,040 H-1B visa petitions that have already been counted against the 2006 annual limit of 65,000 H-1Bs. Taking into account the 6,800 visa petitions set aside under Free Trade Agreements, as of August 1st there were just over 9,100 H-1B visa numbers remaining for this 2006 fiscal year. Once the FY 2006 limit is reached, new H-1B numbers will be unavailable until October 1, 2006 (the start of the 2007 fiscal year). If the current pace of H-1B filings remains steady, H-1B numbers will be exhausted within the next three to four 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](http://www.immstar.com), click "Immigration Updates,"



and choose "Immigration News," then view "Managing the H-1B Cap."

In addition to the H-1B carve-outs for nationals of Singapore and Chile, Congress has also enacted a new 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. Australian nationals who qualify for the H-1B visa will also meet the requirements for the E-3 classification, although the E-3 classification generally involves less paperwork and significantly lower filing fees. At this time, the Department of State and USCIS are still finalizing regulations in order to implement the E-3 visa program. Seyfarth Shaw will provide further guidance on the E-3 visa classification as it becomes available.

Seyfarth Shaw's Business Immigration Group provides periodic information alerts about noteworthy developments in the business immigration field. The information that we provide is of a general nature and should not be interpreted as legal advice applicable to a specific factual situation. If you have questions about the information contained in this Immigration Alert or would like to know more about Seyfarth Shaw's Business Immigration Group and our inbound and outbound visa processing capabilities, please visit our website, [www.immstar.com](http://www.immstar.com), or contact a member of the Business Immigration Group: Jim King ([jkings@seymarth.com](mailto:jkings@seymarth.com)) in Atlanta; Russell Swapp ([rswapp@seymarth.com](mailto:rswapp@seymarth.com)) or Dyann DelVecchio ([ddelvecchio@seymarth.com](mailto:ddelvecchio@seymarth.com)) in Boston; Ric Fischer ([rfischer@seymarth.com](mailto:rfischer@seymarth.com)) in Chicago; Michael Murray ([mmurray@seymarth.com](mailto:mmurray@seymarth.com)) in New York; or Howard Hobbs ([hhobbs@seymarth.com](mailto:hhobbs@seymarth.com)) in DC. If you would like to receive our Immigration Alerts, please contact Sarah Compton via e-mail at [scompton@seymarth.com](mailto:scompton@seymarth.com). Thank you.



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