



One Minute Memo[®]

H-1B Lottery Complete; “Cap-Gap” Rule Published

H-1B Lottery Complete

On April 11, 2008, United States Citizenship & Immigration Services (USCIS) announced that it had received sufficient H-1B petitions to meet both the master’s and regular H-1B quotas (or “caps”) for Fiscal Year 2009, which begins on October 1, 2008. USCIS received nearly 163,000 H-1B petitions for the 85,000 available visas. Because the demand far exceeded the supply, the USCIS conducted a lottery to select petitions for approval.

On April 15, 2008, USCIS announced that it had completed both rounds of the H-1B “lottery.” USCIS used a random selection process for all cap-subject filings received from Tuesday, April 1st through Monday, April 7th, 2008 to determine which filings will be adjudicated. [USCIS first conducted a separate master’s cap lottery for the over 31,200 master’s cap petitions that it received, and it then conducted the regular lottery, which included master’s petitions not selected in the master’s cap lottery.]

USCIS expects to notify petitioners whose case(s) have been selected in the lottery by June 2, 2008. The total processing time is expected to be 8 to 10 weeks. For

those cases filed via premium processing, the 15-day premium processing period began on April 14, 2008. Therefore, approval notices should be received for expedited petitions by the end of the month.

For additional background information on the H-1B visa program and the cap, click on the links to view our previous One Minute Memos titled “[H-1B Quota Reached](#),” “[H-1B Work Permit Filings: Will You Beat the Cap?](#),” and “[H-1B Cap Extended](#).”

“Cap-Gap” Rule Published

On April 8, 2008, the Department of Homeland Security (DHS) published an interim final rule in the Federal Register to give employers and recent college graduates much-needed relief in connection with the H-1B cap. Specifically, the interim final rule provides an automatic extension of optional practical training (OPT) for the so-called “cap-gap” experienced by students waiting for approval of H-1B petitions. However, the automatic extension ends with the rejection, denial, or revocation of the H-1B petition filed on behalf of the F-1 student. The new rule also grants certain students up to 29 months

of employment authorization, allowing them three opportunities to apply for H-1B status before exhausting their work authorization. For additional background information on the rule, click the link to view our previous Management Alert titled “[DHS to Eliminate “Cap-Gap” By Extending Employment Authorization for Certain F-1 Students.](#)”

If you have any questions about the new rule or about immigration in general, please contact the Seyfarth Shaw attorney with whom you work, or any business immigration attorney on our website, www.seyfarth.com.

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