

One Minute Memo[®]



H-1B Cap Extended

On March 19, 2008, U.S. Citizenship and Immigration Services (USCIS) issued a new rule regarding the H-1B "cap," effectively extending the filing deadline by four days.

The rule states that if USCIS receives enough H-1B petitions to meet the cap within the first five business days of accepting applications, USCIS will apply a random selection process to all H-1B petitions received during that five-day time period. Last year, the random selection process was applied to petitions received during the first two days of the filing period, and it was anticipated that the receipt period would be shortened to a single day this year.

The new rule means that employers effectively have until Friday, April 4, 2008 to prepare and file (via overnight delivery) H-1B petitions for foreign nationals that they hope to employ beginning on October 1, 2008. Petitions received by USCIS on or before Monday, April 7, 2008 are likely to be subject to what has become the H-1B "lottery."

The rule also addresses the so-called H-1B "master's cap," for holders of U.S. master's degrees. If the master's cap is reached on or before April 7, 2008, USCIS will apply the random selection process to those petitions prior to conducting the regular H-1B lottery. Any master's cap petitions not selected in the master's lottery will be eligible for selection in the regular H-1B lottery, effectively being granted two opportunities at an H-1B visa.

For additional background information on the H-1B visa program and the cap, [click here](#) and view our previous One Minute Memo titled "H-1B Work Permit Filings: Will You Beat the Cap?"

If you would like to discuss filing an H-1B petition for a current or prospective employee, please contact the Seyfarth Shaw attorney with whom you work, or any attorney in the Business Immigration Group on our website, www.seyfarth.com.

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