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What is an H-1B?

H-1B petitions are temporary work visas for positions requiring theoretical or technical expertise in specialized fields for qualified foreign nationals to live and work in the U.S. Many H-1B foreign nationals have successfully gone on to apply for and obtain lawful permanent residence status (also known as, green card).

Foreign nationals with at least a bachelor's degree or the equivalent (equivalent degree and/or work experience) may be sponsored for H-1B petitions. A broad range of positions may fall under H-1B specialty occupations; each case depends on a position's own set of circumstances.

H-1B Annual Work Visa Cap

On June 12, 2012 (today), the U.S. Citizenship and Immigration Services (USCIS) announced that it has received sufficient number of H-1B petitions, on June 11, 2012, to reach its statutory cap of 65,000 for fiscal year (FY) 2013, and has received over 20,000 H-1B Master's Degree Exemption, on June 7, 2012.

June 11, 2012 was the final receipt date for H-1B cap petitions referenced above.

On April 2, 2012, the USCIS began accepting H-1B nonimmigrant petitions that are subject to the government-mandated annual H-1B cap of 65,000 and the 20,000 U.S.

advanced degree cap exemption. The advanced degree exemption applies to an H-1B beneficiary who has successfully obtained a U.S. Master's degree or higher. These H-1B petitions are for Fiscal Year 2013 (FY2013) visa quota (for employment start-date of October 1, 2012 or later). The FY2012 visas quota (for October 1, 2011 employment start-date or later) was already closed. Up to 6,800 visas are set aside from the 65,000 cap during each fiscal year for the H-1B1 program under the terms of the legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements. Unused numbers in this pool are made available for H-1B use for the next fiscal year; in recent years, all visa numbers had been exhausted eventually.

H-1B petitions can be filed under premium processing (faster processing of certain employment-based petitions and applications). Premium processing H-1B petitions filed during an initial five-day filing window are undergoing a 15-day processing period that began April 9. For all other H-1B petitions filed for premium processing, the processing period begins on the date that the properly filed petition is physically received at the correct USCIS Service Center.

When the H-1B cap is exhausted is the date USCIS informs the public that the cap has been reached ("final receipt date"), and this may differ from the actual final receipt date. In ensuring a fair system, on the final receipt date, the USCIS may utilize the random selection approach by selecting the number of petitions that will be considered for final inclusion within the cap. The USCIS will reject H-1B cap petitions that are not selected, as well as those received after the final receipt date. The final receipt date will be the date the USCIS physically receives the petition, and it is not based on the date that the H-1B petition has been postmarked.

Some H-1Bs Are Not Subject to H-1B Annual Work Visa Cap

Not all H-1B petitions are subject to annual visa cap, depending on the types of H-1B petition being filed, or the types of entity-sponsor. For examples, foreign nationals who already have approved H-1B petitions or H-1B status may still have H-1B petitions filed for them to extend their H-1B status, or to change or add H-1B employers.

Duration of H-1B

In general, H-1B petitions/work visas are approved for three years each time (up to a total of 6 years). Under certain circumstances, H-1B work visas can be extended beyond the 6-year maximum time limitation.

H-1Bs Not Selected or Filed When All H-1B Annual Work Visas Are Used Up

Potential H-1B candidates who do not make it to the Fiscal Year 2013 H-1B visa quota (October 1, 2012 employment start-date or later) have the options to have their H-1B cap petitions submitted or resubmitted to USCIS on or after April 1, 2013 (October 1, 2013 employment start-date or later) for the Fiscal Year 2014 H-1B visa quota. They can also consider other immigration options such as other nonimmigrant work status and self-petition green card filings, if eligible.

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We represent companies, employers, individuals and families in green card, work visa and citizenship matters in U.S. immigration law. We also have a focus on self-petition green card cases such as extraordinary ability and national interest waiver.

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