

# Immigration resource news magazine for United states of america

Immigration Magazine

## Not Selected in the H-1B Cap Lottery? Avoid Immigration Fraud: Maintaining Status in the U.S. and Reapplying.

Tiyalaw · Tuesday, May 10th, 2016



### Not Selected in the H-1B Cap Lottery? Avoid Immigration Fraud: Maintaining Status in the U.S. and Reapplying.

#### H-1Bs Not Selected or Filed When All H-1B Visa Numbers Are Used Up: Potential H-1B Candidates Who Continue to Stay in the U.S. Must Maintain Legal Immigration Status

H-1B candidates who have not made it to the Fiscal Year 2017 H-1B visa quota (October 1, 2016 employment start-date) **have the options to have their H-1B cap petitions submitted to USCIS on April 1, 2017 (with an October 1, 2017 employment start-date)** for the 2018 Fiscal Year H-1B visa cap/quota. Such H-1B candidates may also **consider other immigration options such as other nonimmigrant status, work permit, and self-petition green card filings, if eligible.**

**Please note, if potential H-1B candidates are in the U.S. and are considering other immigration options such as the above, they must still continue to maintain legal immigration status in the U.S., in compliance with U.S. Immigration & Nationality Law.**

#### **Example of Failure to Maintain Status: Immigration Fraud**

**On April 5, 2016, special agents of the Homeland Security Investigations (HSI) of the U.S. Immigration and Customs Enforcement (ICE) arrested 21 individuals (e.g. brokers, recruiters) for conspiracy to commit visa fraud, conspiracy to harbor aliens for profits, and other offenses. In addition to the arrests of the defendants, the international students involved in the student-visa fraud or pay-to-stay scheme were also arrested by ICE for removal (deportation) purposes. The arrests were made in Virginia, Washington, New York, and New Jersey. HSI and ICE are part of the U.S. Department of Homeland Security.**

**The defendants fraudulently enabled around 1,076 international students, primarily from India and China, to enroll as F-1 students under the false pretense that they were participating in full courses of study at the University of Northern New Jersey (UNNJ) in New Jersey. All the international students were considered willing participants in the fraudulent F-1 scheme.**

**Unbeknownst to the defendants, UNNJ is a sting operation - a storefront serving as undercover operations - by HSI agents posing as school administrators to investigate criminal activities involving student visa fraud and alien harboring for profits. UNNJ was not staffed with any educators, had no actual academic curriculum, and did not have actual classes or educational activities.**

**The defendants solicited UNNJ and facilitated the international students' enrollment at UNNJ to fraudulently obtain and maintain F-1 student visa or status, in exchange for commissions or kickbacks. The defendants also created fake student records such as transcripts, attendance records, diplomas, and projects, purchased by international students.**

**International students were issued UNNJ I-20 Certificate of Eligibility for Nonimmigrant (F-1) Student Status - for Academic and Language Students, for international students to remain in the U.S. These I-20 Certificates and phony student documents were then used to apply for H-1B Cap Petitions with the U.S. Citizenship and Immigration Services (USCIS). Additionally, the defendants used UNNJ to obtain work permit and employment authorization for their clients (international students).**

#### **H-1B Annual Work Visa Cap**

**On April 1, 2016, the U.S. Citizenship and Immigration Services (USCIS) began accepting H-1B Cap Petitions for the annual 65,000 government-mandated cap for the 2017 fiscal year (FY), and the 20,000 exemption for H-1B under the U.S. advanced degree. On April 7, 2016, USCIS announced it had received more than sufficient**

H-1B Cap Petitions to meet the cap.

USCIS received over 236,000 H-1B Cap Petitions described above. USCIS had long completed its computer-generated random selection process (lottery system) which started on April 9, 2016.

Those under U.S. advanced degree not selected within the 20,000 visa numbers were processed under random selection or lottery for the 65,000 limit.

**For some time now, USCIS has been issuing receipt notices for the above H-1B Cap Petitions filed under premium processing, regular processing, and U.S. advanced degree.**

**Normally, all USCIS receipt notices for selected H-1B Cap Petitions were being issued within several weeks of the lottery system (random selection process).**

**USCIS announced on May 2, 2016 that it has completed all its data entry of H-1B Cap Petitions selected in its lottery system. USCIS will now begin returning all H-1B Cap Petitions not selected. Due to the overwhelming number of H-1B Cap Petitions received, USCIS is not certain when it will complete returning all the unselected petitions but will issue an announcement once they are all returned to the employers (petitioners). Previously, H-1B Cap Petitions not selected in the lottery system were being returned throughout the summer.**

**USCIS urges employers (petitioners) not to inquire on the status of their H-1B Cap Petitions until they have received a receipt notice or a return of an unselected petition. This will allow USCIS to better-use their resources such as on adjudicating cases and completing the necessary return of unselected petitions.**

**On May 12, 2016, USCIS will begin premium processing of H-1B Cap Petitions selected in the lottery system. For H-1B Cap Petitions or eligible cases under premium processing, USCIS will adjudicate the case within 15 calendar days. Additionally, employers have the option to upgrade their selected H-1B Cap Petitions to premium processing.**

**All H-1B Cap Petitions above not selected in the lottery system will be returned with their filing fees. The filing fees for any H-1B Cap Petitions above with duplicate filings will not be returned.**

### **What is an H-1B?**

H-1B petitions are temporary work visas for specialty occupations. They are 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 the position's overall circumstances, necessitating complex legal analysis.

### **Some H-1Bs Are Not Subject to H-1B Cap or Quota**

Not all H-1B petitions are subject to the annual visa cap or quota. It depends 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. Certain employers are cap exempt.

### **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.

This article is intended for informational purposes only, and should not be relied on as legal advice or attorney-client relationship. By **Aik Wan Kok, Lawyer USA Immigration Services, at Tiya**; Tel: 703-772-8224 & koka at tiyalaw dot com; Direct dial from abroad: 001-703-772-8224; <http://www.tiyaimmigration.com> ; <http://tiyalaw.blogspot.com> ; <http://immigrationresource.net>

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