



**CLIENT BULLETIN**

TO: All Cohen & Grigsby, P.C. Immigration Clients  
FROM: Cohen & Grigsby, P.C.  
DATE: April 10, 2008  
RE: Fiscal Year 2009 H-1B Cap

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**USCIS Announces FY 2009 H-1B Cap Reached**

On April 8, the U.S. Citizenship and Immigration Services (USCIS) announced that as of April 7, 2008, it had received enough petitions to satisfy both the congressionally mandated H-1B cap and “advanced degree” exemption for fiscal year 2009 (FY 2009).

As noted in prior client bulletins, Congress mandated that the USCIS approve only 65,000 petitions for new H-1B employment in FY 2009, i.e., October 1, 2008, through September 30, 2009. Of these 65,000 visas, 6,800 are reserved for the Chile/Singapore H-1B1 program, thereby leaving only 58,200 visas for all other nationalities each fiscal year.

USCIS will conduct a random, computerized lottery selection process for the “advanced degree” exemption petitions first. All “advanced degree” petitions not selected will be part of the random selection process for the 65,000 limit. Before running the lottery, USCIS must complete initial data entry for all filings received during the filing period (April 1, 2008 through April 7, 2008). Due to the high number of petitions, USCIS is not yet able to announce the precise day on which it will conduct the lottery. In past years, it has taken USCIS at least several weeks to determine exactly how many cases were received.

Please note that any filings for new/first-time H-1B employment received after the “final receipt date” of April 7, 2007, will be rejected. More specifically, only petitions received between April 1 and April 7 will be subject to the random selection process. After random selection, any remaining H-1B petitions that do not receive an FY 2009 number (and are not otherwise exempt) will be rejected and returned with the filing fee(s).

As in past years, there now exist various immigration legislation/proposals which include provisions to increase the annual H-1B cap. Although not certain, there is a possibility that, based on such legislation and the current climate in Congress, we will at least get some H-1B relief during this calendar year. We encourage you to contact your Senators and Representative to urge them to support H-1B immigration reform/relief.

The USCIS will continue to accept H-1B petitions filed to:

- Extend the amount of time a current H-1B worker may remain in the United States;
- Change the terms of employment for current H-1B workers;
- Allow current H-1B workers to change employers; and
- Allow current H-1B workers to work concurrently in a second H-1B position.

Please note that the USCIS will also continue to accept petitions for new H-1B employment where the petitioner/employer is not subject to the annual cap. To qualify as a "cap exempt" petitioner, the employer must be: (i) an institution of higher education or a related or affiliated nonprofit entity; (ii) a nonprofit research organization; or (iii) a governmental research organization.

Please also note that the petitioners may resubmit first-time employment H-1B petitions when H-1B visas become available for the 2010 fiscal year (FY 2010). The earliest date a petitioner may file a petition requesting FY 2010 H-1B employment (with an employment start date of October 1, 2009) is April 1, 2009.

Last, please remember that there may exist other visa alternatives to filing an H-1B petition. As we have done in the past when a case is caught by the cap, we will work with you to develop and implement a solution that will permit the affected employee to legally remain employed in the United States. Please contact us if you have a case that may be subject to the cap and/or if you wish to discuss any H-1B alternatives.

We will, of course, continue to closely monitor this entire situation and communicate any developments as they occur.

Please contact any member of the Cohen & Grigsby Immigration Department if you have any questions regarding the above.

*To receive future bulletins by e-mail, please send an e-mail to [info@cohenlaw.com](mailto:info@cohenlaw.com).*