

April 1, 2009, U.S. Citizenship and Immigration Services (USCIS) began accepting H-1B petitions for employers to hire foreign workers in “specialty occupations”, for Fiscal Year 2010, which starts Oct. 1.

USCIS in its most recent update of April 20, 2009, confirmed that the H-1B Cap for FY 2010 has not been reached yet with fewer than predicted H-1B petitions filed this year by employers.

Although the economic downturn was forecasted to weaken the demand for H-1B employees, most immigration attorneys, myself included, are surprised that over three weeks into the new H-1B season and USCIS is still accepting H-1B petitions and the cap of 65,000 visas has not been met.

This is the first year in many years that the H-1B cap has not been reached within days of the April 1st date. Two years ago, USCIS received more than 130,000 petitions in two days before the agency stopped accepting them. Last year, USCIS stopped accepting petitions within a week

As of the date of writing this article, the USCIS has announced that it had received approximately 44,000 H-1B petitions counting toward the Congressionally-mandated 65,000 cap and 20,000 petitions towards the 20,000 advanced-degree exemption cap. The USCIS, however, has announced that it will continue to accept advanced degree petitions since not all petitions received are approvable.

USCIS says it will continue to monitor the number of H-1B petitions received and will issue a notice when it reaches the 65,000 regular cap and the 20,000 advanced-degree exemption cap.

If and when USCIS hits the H-1B cap, petitions received on that final receipt date could be subject to a computerized random selection. If for instance USCIS receives 20 petitions, but can accept only 10 to reach the cap, those 10 will be randomly selected.

This scenario presents a unique opportunity for employers who chose not to file H-1B petitions earlier for otherwise eligible workers due to the potential non-selection of an H-1B petition in the anticipated lottery. It is not too late to file for an H-1B petition, as there is availability as of the date of writing the article, under the regular cap, as well as a window of opportunity under the U.S. master's cap.

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