

2016 Filing Window for New H-1B Petitions is around the Corner

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On April 1 of each year, ***United States Citizenship & Immigration Services (USCIS)*** begins accepting petitions from employers seeking to hire new H-1B workers during the next fiscal year, which begins on October 1. The number of available new H-1Bs is capped at 65,000 per fiscal year with an additional 20,000 slots available to foreign nationals holding advanced degrees from U.S. institutions. This fixed number of H-1Bs available per fiscal year is known as the H-1B cap.

If during the first five business days of April USCIS receives more H-1B petitions than it is permitted to adjudicate, USCIS will randomly select H-1B petitions for adjudication among all of the petitions received during the five-day filing window. In 2014 and 2015, USCIS received significantly more petitions than it was permitted to adjudicate during the brief filing window and we anticipate that the number of petitions filed during this year's five-day window will again exceed the H-1B cap. To ensure that H-1B petitions are included within the random selection process, we recommend that employers make hiring decisions for foreign national workers and job applicants as soon as possible and prepare to file petitions for new H-1B on April 1, 2016.

Note that in most cases individuals who currently have H-1B status, whether with you or another employer, need not worry about the annual H-1B cap. However, other individuals, including those who are currently in F-1 (student) or J-1 (exchange visitor) status, may need new H-1B petitions filed on their behalf in order to transition to H-1B employment and avoid gaps in employment authorization. Also note that the H-1B cap does not apply to employees of (i) colleges and universities; (ii) nonprofit organizations related to or affiliated with a nonprofit college or university; or (iii) nonprofit or governmental research organizations.

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