

Start Planning Now-H-1B Cap Filing Season is Here

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The start of a new calendar year means that it is H-1B cap filing season once again.

Each U.S. government fiscal year (October 1st to September 30th), new H-1B petitions are subject to an annual cap of 65,000 with an additional 20,000 allotted to U.S. advanced degree individuals.

Companies need to evaluate their anticipated hiring needs for H-1B professionals, specifically those requiring initial H-1B status. This is particularly true for any current employees working under Optional Practical Training (OPT) and any individuals who were not chosen under last year's H-1B cap lottery process. These H-1B cap cases will be filed on April 1, 2018 requesting a start date of October 1, 2018, so now is the time to start planning.

Employers can file H-1B petitions no earlier than six months in advance of the anticipated start date, so April 1st signals the start of what has become an annual race to get petitions filed as early as possible to ensure acceptance before the cap of 85,000 visas is reached. The 85,000 cap includes the basic cap of 65,000, plus an additional 20,000 H-1B visas available to foreign nationals who have earned an advanced degree (Master's or higher) from a U.S. university.

Last year's H-1B cap was again reached right away in April. In fact, USCIS again received more filings than H-1B numbers available and a lottery was conducted. Therefore, some H-1B filings were unfortunately rejected under the lottery process. This has been the case for many years now.

The demand for new H-1B workers will likely again result in the new cap being reached right away in April this year. It is also very likely that the volume of filings will require another lottery process. We expect that demand will be extremely high again this year and that the H-1B numbers will be immediately exhausted. We do not expect any changes to the filing or lottery selection process this year.

*** Please note that some foreign nationals are not subject to the H-1B cap, including individuals who already have been counted toward the cap in a previous year. Also, certain employers, such as universities, government-funded research organizations, and some nonprofit entities are exempt from the H-1B cap. All other employers should be aware of the H-1B cap process. ***

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