

On Tuesday, April 1, 2014 US Citizenship and Immigration Services (USCIS) will begin accepting filings of H-1B visa petitions for employment in the fiscal year 2015 (FY 2015). Employers should prepare to start filing H-1B petitions for new and existing employees who will be eligible for a first-time H-1B visa to begin employment in FY 2015 (i.e., on or after October 1, 2014).

Congress has mandated an annual cap of 65,000 H-1B visas with an additional 20,000 visas available for beneficiaries with advanced degrees from US colleges or universities. It should be noted that H-1B visa petitions filed on behalf of current workers who have been counted previously against the H-1B visa cap will not be included toward the annual cap set by Congress. Furthermore, pursuant to the free trade agreements with Chile and Singapore, 6,800 H-1B visas are available exclusively to Chile and Singapore nationals. This effectively reduces the total allotment of available H-1B visas to 58,200.

As a reminder, an interim final rule issued in 2008 remains in effect and provides "cap-gap" relief for F-1 students with pending H-1B petitions. Specifically, F-1 student visa holders who have received work authorization pursuant to Optional Practical Training (OPT), may extend their authorized period of stay and work authorization as long as they are a beneficiary of a timely-filed H-1B petition that was granted by, or is pending with, USCIS, prior to the expiration of their OPT.

Due to a recovering economy, the FY 2014 year allotment depleted sooner than expected and lasted only one week until April 5, 2013. The demand for H-1B visas will likely be the same as, if not greater than, last year. If the number of applications received exceeds the numerical cap, USCIS will conduct a "lottery" and randomly select the number of petitions required to reach the numerical limit from the pool of petitions received on the final day of acceptance ("final receipt date"). USCIS will then reject cap-subject petitions that are not selected, as well as those received after the final receipt date.

This year, employers should endeavor to commence initiation and preparation of their H-1B cap filings well in advance of April 1. As a prerequisite to filing an H-1B petition, an employer must first obtain a certified labor condition application (LCA) from the Department of Labor (DOL). Due to surges in use, DOL's online iCERT visa portal system, which generates LCAs, has recently experienced system outages causing unexpected delays in the H-1B preparation process. Therefore, filing LCAs early will ensure timely H-1B cap filings.

For more information regarding H-1B petitions or immigration developments, please contact your principal Squire Sanders lawyer or one of the individuals listed in this publication.

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