

H-1B Cap Reached for U.S. Master's Degrees; Remaining Numbers Are Diminishing

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U.S. Citizenship and Immigration Services (USCIS) has announced that the allotment of 20,000 H-1B petition approvals available to foreign nationals holding a U.S. master's or higher degree has been exhausted for fiscal year 2011. No more petitions may be filed under this allotment until April 1, 2012; however, employers may still file H-1B petitions for beneficiaries that hold a U.S. master's or higher degree under the annual general H-1B cap of 65,000. As of October 21, 2011, USCIS had received 42,600 H-1B petitions counting toward the general cap of 65,000 H-1B petition. Given the limited number of H-1B petitions that remain available, employers contemplating the hire of a foreign national in H-1B status should initiate the process without delay.

Certain categories of foreign nationals are not subject to the annual cap, including H-1B beneficiaries who (1) have held H-1B status in the last six years; (2) have not exhausted their entire six-year period of H-1B status; or (3) will be employed at an institution of higher education, a related or affiliated nonprofit entity, or a nonprofit or governmental research organization.

What This Means for Employers

Once the general 65,000 H-1B cap for this fiscal year has been reached, employers will not be able to file cap-subject H-1B petitions until April 1, 2012, and may request an employment start date of no earlier than October 1, 2012. Accordingly, employers should quickly assess whether they will need to file H-1B petitions during the current fiscal year. Among those who may require H-1B petitions are foreign national new hires who do not have or have not recently held H-1B status, including foreign national students.

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Now Available: *AILA's Focus on Immigration Practice Under AC21*

Written by Eleanor Pelta and A. James Vázquez-Azpiri, *AILA's Focus on Immigration Practice Under AC21* provides invaluable insight on the effect AC21 has had on the H-1B visa category. For more information, please visit www.ailapubs.org/ac21.html or call 1.800.982.2939 to order a copy.

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