



FY- 2014 H-1B LOTTERY APPLIED TO 124,000 PETITIONS

On April 8, 2013, U.S. Citizenship & Immigration Services (CIS) announced that CIS had conducted the FY-2014 H-1B “lottery” on April 7th, after having received approximately 124,000 new H-1B petitions during the week of April 1st through April 5th.

CIS has confirmed that a lottery was first applied to Master’s cap petitions in order to select the 20,000 cap-exempt petitions filed on behalf of individuals who hold a Master’s or higher degree from a U.S. institution of higher education. Those Master’s cap cases that were not selected in the initial Master’s cap lottery were then entered into the lottery for selection of petitions under the Regular H-1B cap.

CIS will notify petitioners soon, by either return of a rejected H-1B petition along with applicable filing fee checks, or by issuance of a Form I-797 Notice of Action/Receipt Notice acknowledging receipt and payment of applicable fees for the petition. Some petitioners requesting “premium processing” of an H-1B petition have already received notification of receipt and allocation of an H-1B number; however, petitioners who have not yet received notice of receipt for a “premium processing” case should not yet assume that the petition was not selected in the lottery.

F-1 Students Seeking Change of Status to H-1B – Cap Gap Employment Extension

Students who held valid F-1 Optional Practical Training employment authorization when their H-1B petitions were filed with a request for a change of status to H-1B receive the benefit of an automatic extension of their employment authorization from the date their current Employment Authorization Document (EAD) card expires until September 30, 2013. This extension will terminate if the petition is rejected under the H-1B cap or is ultimately denied. Once petitioners have been notified of the allocation of H-1B visa numbers, expected in the next 1-2 weeks, your FosterQuan immigration attorney can assist you in evaluating any potential options for those students whose H-1B petitions have been rejected.

STEM Extensions of Optional Practical Training (OPT) Work Authorization

In some cases, F-1 students who have graduated from a Science, Technology, Engineering, or Math (STEM) degree program may be eligible to apply for an additional 17-month extension of their F-1 Optional Practical Training employment authorization. In order to qualify for this “STEM extension”, students must generally have maintained lawful status, must not have exceeded the permissible period of F-1 OPT unemployment, must have graduated from a STEM program and must be employed in a STEM field by an employer participating in the E-Verify program for electronic verification of work authorization. E-Verify program participation requires an employer to enter into a Memorandum of Understanding with the

Government. Should your company seek to participate in the E-Verify program, contact your FosterQuan immigration attorney as soon as possible for more information about program requirements.

Categories of H-1B Petitions Not Subject to the H-1B Cap

H-1B visa numbers remain available for citizens of Chile and Singapore, pursuant to trade agreements that set aside H-1B numbers under each year's quota. Additionally, the following types of H-1B petitions are not subject to the annual H-1B cap and may be filed without numerical limitation:

1. H-1B Petition Extensions for existing H-1B employees
2. H-1B Change of Employer petitions for candidates counted under a previous year's H-1B cap who hold H-1B status and are seeking a change of employer
3. H-1B Petitions on behalf of employees of institutions of higher education
4. H-1B Petitions on behalf of employees of Nonprofit Organizations affiliated with institutions of higher education
5. H-1B Petitions on behalf of employees of Nonprofit Research Organizations or Governmental Research Organizations
6. H-1B Petitions on behalf of candidates who were previously granted H-1B status in the past six years and have not left the United States for more than one year after attaining H-1B status

For more information on how your organization may qualify for a potential H-1B cap exemption, please contact your FosterQuan Immigration Attorney.

FosterQuan will continue to monitor developments in connection with the H-1B visa program, including proposed legislation that would increase the annual H-1B quota. Future updates will be made available in FosterQuan Immigration Updates© and on our firm's website at www.fosterquan.com.