

Publications

Immigration Alert: Time to Prepare for April 1 H-1B Filings (2013)

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At the beginning of each fiscal year, which starts October 1, the U.S. Citizenship and Immigration Services makes available an allocation of new H-1B visas. The number of these new visas that are available each year is capped at approximately 65,000.

The annual cap for the current fiscal year (which ends September 30, 2013) allocation of H-1B visas was reached on June 11, 2012. We anticipate that the 2014 fiscal year H-1B cap may be reached even earlier. Although any new H-1B visa petition approvals issued under the FY 2014 cap cannot become effective until October 1, 2013, such petitions may be filed as early as April 1, 2013.

Petitions that are subject to the annual cap include H-1B petitions that are filed for first time H-1B beneficiaries or for people who have been outside the United States for one year or more since exhausting any prior permissible H-1B time and are seeking to return to the United States for a new period of H-1B admission.

Petitions that are *not* subject to the cap include petitions for individuals who:

- are currently in H-1B status for another employer
- have already been counted toward the annual H-1B cap in the six-year period prior to the approval of the new petition
- are seeking H-1B employment at institutions of higher educational and their related or affiliated nonprofit entities
- are employed by nonprofit or governmental research organizations
- are J-1 nonimmigrant physicians who received a waiver of the two-year foreign residence requirement based on sponsorship by a state health department

Note also that employees working pursuant to Optional Practical Training (OPT) often have work authorization that expires in the summer months, prior to the October 1 date where new H-1B visas become available. This has become known as the "cap gap" problem. However, the timely filing of an H-1B visa petition for any employee

faced with a cap gap situation can automatically extend the employee's lawful F-1 status and work authorization until October 1, 2013. To be deemed timely, this petition must be filed on or after April 1, 2013 and prior to the expiration of the employee's current OPT work authorization.

If you think you have a candidate for H-1B status who might be subject to the cap, we encourage you to contact your Vorys attorney as early as possible to discuss the timing of filing the petition.