



IMMIGRATION

ALERT

USCIS ANNOUNCES ANTICIPATION OF 5-DAY H-1B SEASON

By The Fox Rothschild Immigration Practice Group

It's a good sign that the U.S. economy is improving and a bad sign for employers seeking to engage foreign nationals. On Friday, March 15, 2013, U.S. Citizenship and Immigration Services (USCIS) announced that it anticipates the Fiscal Year 2014 H-1B cap will be reached between April 1 and April 5. The [announcement](#) states:

"USCIS will monitor the number of petitions received and notify the public of the date on which the numerical limit of the H-1B cap has been met. ...If USCIS receives more petitions than it can accept, USCIS will use a lottery system to randomly select the number of petitions required to reach the numerical limit. USCIS will reject petitions that are subject to the cap and are not selected..."

The H-1B is a versatile nonimmigrant visa for professional employees of U.S. employers, which means it is used for workers with at least a U.S. Bachelor degree (or equivalent). Typically, employers use this visa for occupations such as computer professionals, physicians, accountants and engineers. The visa carries a "prevailing wage" requirement, which means that the employer must pay the worker a mandated minimum salary set by the Department of Labor.

There are only a limited number of new H-1B visas available each year (65,000 total) and the next allotment becomes available as of October 1, 2013, which is when the Federal government's fiscal year begins. An employer may file an H-1B petition as early as six months in advance of the anticipated start date, which means that an employer may file an H-1B petition for a cap subject worker as early as April 1, 2013 (the first day of 'H-1B Cap Season'). H-1B cap subject

petitions may be filed under USCIS' expedited processing, premium processing, but USCIS has [announced](#) that premium processing for such petitions will not take effect until April 15, 2013, in anticipation of the high volume of H cap subject filings.

When the economy is poor and "no one" is hiring, the H-1B visas are not snapped up as quickly as when the economy is improving and "everyone" is hiring. This year it seems that "everyone" is hiring. For those employers on the fence — pay the money and hire the H-1B worker or let that talent go elsewhere — the time is now (and may have passed) to sprint toward an FY2014 H-1B visa filing. Given the current predictions, including those from USCIS itself, the H-1B visa cap will be reached very quickly this year. If an employer's petition arrives at USCIS late and there are no more FY 2014 H-1B numbers left, then the employer will need to wait another year to try again or lose the worker.

For more information regarding the information in this Alert, or if you require assistance with your company's immigration or employment issues, including IRCA compliance, I-9s, audits, visa processing or comprehensive immigration strategy, please contact any member of our [Immigration practice group](#):

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