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USCIS TO ACCEPT H-1B CAP SUBJECT PETITIONS APRIL 1 TO 7; PREMIUM PROCESSING TOLLED UNTIL APRIL 28, 2014

By Alka Bahal

As many are aware, the filing period for H-1B petitions subject to the fiscal year 2015 numerical cap begins in less than one week, on April 1, 2014. United States Citizenship and Immigration Services (USCIS) currently reports again this year that it anticipates receipt of more than the allotted quota of 65,000 cap-subject H-1B petitions (including more than 20,000 petitions filed on behalf of individuals with a U.S. master's degree or higher). This means that the H-1B cap will most likely be met in the first five business days of the filing season, between April 1 and April 7, 2014. In short, if you are looking for a shot at an H-1B visa this coming year, your properly completed, signed and supported petition must be received at USCIS no later than April 7, 2014.

There are only a limited number of new H-1B visas available each year (65,000 total), and the next allotment becomes available when the federal government's fiscal year begins on October 1, 2014. 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, 2014**.

Under the current law, if more than enough petitions are filed to reach the numerical limit (as expected), USCIS will include all petitions filed in the first five business days in the random selection

process to choose those petitions that will be accepted for processing. This means that the window for filing is anticipated to close on the fifth business day of April (April 7, 2014). USCIS will then run a random selection process to choose those petitions that will be accepted for processing, rejecting those petitions not selected. It will first conduct the selection process for the 20,000 allotted U.S. master's/advance degree petitions, and then will include any advanced degree petitions not selected in the second random selection process for the remainder to meet the 65,000 limit. Last year, USCIS received approximately 124,000 H-1B petitions during the first five business day of April.

H-1B petitions may be filed under the USCIS' expedited processing service called "premium processing." However, in anticipation of a high number of premium processing filings and in order to facilitate the prioritized intake of these petitions, USCIS has temporarily adjusted its current premium processing practice. Now, premium processing on H-1B cap subject petitions will begin no later than April 28, 2014 (instead of immediately upon filing).

Petitioners may request premium processing at the time of filing and are also able to upgrade a pending H-1B cap petition to premium processing after a receipt notice is issued, per usual procedures,

although the service will remain, technically, unavailable until April 28, 2014. Note that the Form I-797 receipt notice may indicate the date that the premium processing fee is received, but the 15-day processing period set by 8 CFR 103.7(e)(2) will not begin, at the latest, until April 28, 2014.

Remember that irrespective of when an H-1B cap subject petition is filed, if/when the application is approved, the employment start date of the visa will not be earlier than October 1, 2014. In some circumstances, the filing of an H-1B cap subject petition can extend certain employees' status and work authorization to enable them to bridge a common gap between when work authorizing documents issued to recent graduates expire in the spring or early summer until the effective date of the H-1B visa on October 1.

If you have an employee who requires an H-1B petition in order to remain employed, please contact Fox Rothschild immediately. It MAY still be possible to prepare and file a petition before the window for filing closes, but this opportunity diminishes with each passing hour.

If Fox Rothschild is assisting you with the filing of an H-1B petition subject to the cap, we will automatically notify you upon the filing of the petition and upon its acceptance for processing (i.e., selection in the lottery) or rejection.

If you have any questions regarding this Alert, please contact Alka Bahal at 973.994.7800 or abahal@foxrothschild.com or any member of the firm's Immigration Practice.



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