

Special Alert: USCIS Reaches H-1B Cap for FY 2010

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On December 22, 2009, U.S. Citizenship and Immigration Services ("USCIS") announced that it received a sufficient number of H-1B petitions to exhaust the H-1B quota for fiscal year 2010. USCIS also announced that the "final receipt date" for H-1B petitions was December 21, 2009. Cases received after that date will be rejected and returned.

Please note that cases counted on the "final receipt date" are those that were *received* by the Service Centers on December 21, 2009. Cases postmarked on December 21, 2009 are not considered *received*. Additionally, to be fair to all petitioners, USCIS will apply a computer-generated random selection procedure for all cases received on the "final receipt date" to determine which cases will be processed. Cases not selected will be returned to petitioners with all filing fees.

As a result of this development, employers who now wish to hire H-1B workers will need to wait until fiscal year 2011. Fiscal year 2011 begins on October 1, 2010. USCIS will begin accepting petitions for fiscal year 2011 on April 1, 2010. Special rules apply to F-1 students whose Optional Practical Training will expire prior to October 1, 2010, but have a pending or approved H-1B petition for an October 1, 2010 start date.

Good practice dictates that all employment offer letters should be contingent on, among other things, the employee's ability to satisfy the Form I-9 requirements. Now, employers also should begin considering and developing strategies that address issues that may arise due to the H-1B quota. For example, employers should make all offer letters to foreign nationals contingent on securing H-1B status under the fiscal year 2011 cap if the foreign national will require H-1B classification to begin or continue employment. In the event that the employer does not have a

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comprehensive immigration policy, any promises made to sponsor foreign workers, either in writing or verbally, should be carefully constructed to minimize an employer's liability for reliance claims if it is determined that sponsorship can not proceed or an application is ultimately denied.

Resources

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