



LAST MINUTE HELPFUL HINTS FOR FILING A FY 2009 H-1B CAP CASE

Posted on March 28, 2008 by Cyrus Mehta

U.S. Citizenship and Immigration Services (USCIS), anticipating that April 1, 2008 will see a repeat of the mass filings from last year, offers a list of measures the petitioner can take to ensure that the petition is correctly filed on its website, www.uscis.gov. We reproduce substantial portions of this governmental advisory, along with our own revisions and updates.

For Fiscal Year 2009, the first filing date is Tuesday, April 1, 2008. A [new rule](#) published in the Federal Register on March 24, 2008 states that petitions received within the first five business days of April 1, 2008, will be selected for the random lottery if the USCIS receives more than the fixed allotment under the FY 2009 65,000 cap or the Master's 20,000 cap. Thus, to ensure that a petition will be part of the randomized selection, in the event that the USCIS receives more than number allotted under the two caps, the last day for receiving an H-1B petition is April 7, 2008. If the USCIS does not announce that the caps have been reached, petitioners may continue filing beyond April 7 until the USCIS makes such an announcement. The new rule also prohibits multiple filings by the same employer for a prospective H-1B worker who may be subject to the caps. On the other hand, the new rule does not prohibit different employers from filing for the same worker. The rule also does not prohibit related entities within the same group of companies from filing for a single worker for different positions, based on a legitimate business need.

It is important that the applicant qualifies for the H-1B classification, and has the requisite Bachelor's or Master's degree at the time of filing the petition. If the beneficiary has completed all the course requirements for the degree, which includes all exams and papers, the USCIS has indicated that it will continue to accept letters from authorized officials of schools indicating that

the student has completed all the requirements of the degree and is merely awaiting official conferral of the degree. Many Ph.D. students, even if they have not defended their dissertations, may have obtained Master's degrees along the way, and this degree could be used to qualify under the 20,000 Master's cap.

Cap subject petitions received before April 1, 2008 will be rejected. Petitions are filed at Vermont and California Service Centers, depending on jurisdiction. See filing instructions by clicking on "Immigration Forms" on www.uscis.gov and scrolling down to Form I-129. Both the forms and the instructions can be downloaded once you reach this page by clicking, "Download form I-129: Petition for a Nonimmigrant Worker." You can also get to this page by clicking on [USCIS Forms and Fees](http://www.uscis.gov) at www.cyrusmehta.com.

Here are some general tips on what to do to make sure that your petition is completed and filed properly.

1. Clearly label all H-1B cap cases in red ink on top margin of Form I-129 petition. Use the following codes:

- **Reg. Cap** (65,000 regular cap cases minus the C/S cap cases received)
- **C/S Cap** (Chile/Singapore H-1B1s)
- **U.S. Masters** (20,000 cap exemption for beneficiaries with U.S. Masters or higher degrees)
- **Exempt** (for petitions filed by certain institutions of higher education; nonprofit organizations; and nonprofit research organizations or governmental research organizations, as defined in USCIS regulations)

2. Fill out Form I-129 and supplements correctly, consistently and completely.

- **Form I-129 petition**
- **H classification supplement** (page 7)
- **H-1B Data Collection and Filing Fee Exemption Supplement** (pages 10 and 11)

Original signatures are required. **Tip: blue ink** makes it easy for USCIS to confirm an original.

3. Employer must submit the correct fees as seen on form instructions (separate checks for each are best).

Base filing fee for I-129	• \$320
Filing fee for I-539	• \$300 If applying for extension or change of status in the US & there is an accompanying spouse or child seeking H-4 status
American Competitiveness and Workforce Improvement Act of 1998	• \$750 For employers with 1 to 25 full time equivalent employees unless exempt
(ACWIA fee)	• \$1,500 For employers with 26 or more full time equivalent employees unless exempt • (see H-1B Data Collection and Filing Fee Exemption Supplement, Part B)
Fraud fee	• \$500 To be submitted with the initial H-1B petition filed on behalf of each beneficiary by a petitioner. (Not for Chile, Singapore H-1B1 cases)
Premium Processing fee	• \$1,000 For employers seeking Premium Processing Service

See Fee Exemption and/or Determination (Page 10 and 11) for detailed instructions on fees.

4. Please send only one petition per envelope. (These may then be mailed together in one mailing package.)

- Regular Cap
- U.S. Master's Cap
- Regular Cap Premium Processing
- U.S. Master's Cap Premium Processing
- H-1B1 Chile/Singapore

Please note that incorrectly completed or filed petitions may result in rejection or denial of the petition.

USCIS has informed AILA that it will accept deliveries through close of business from April 1–7, 2008. Close of business means 5 p.m. local time at the locations of the service center. USCIS will start accepting deliveries at 6 a.m. on those

days. On the last day, April 7, 2008, USCIS will accept deliveries from couriers until 7 p.m. local time.

Note that petitions filed by US Postal Services (USPS) are delivered to a P.O. Box at one or more scheduled times during the day. USCIS has told AILA that delivery to a P.O. Box does not ensure that the filing will be picked up by the USCIS the same day it is placed in the P.O. Box by USPS, and thus will not be considered timely filed.

Finally, we recommend that when checking the petition, you use the worksheets of the USCIS at http://www.uscis.gov/files/form/H-1B_Worksheet.pdf.