



H-1B FY 2009 CAP UPDATE

Posted on April 18, 2008 by Cyrus Mehta

On April 14, 2008, the United States Citizenship and Immigration Services (USCIS) conducted a computer-generated random selection process on H-1B petitions to select H-1B petitions for fiscal year 2009. Selected petitions would continue to full adjudication. Those filed under the premium process program would move faster and USCIS designated April 14 as the first day of the 15-day premium processing period.

Petitioners whose properly filed petitions have been selected for full adjudication should receive a receipt notice dated no later than June 2, 2008. USCIS will return unselected petitions with the fees to petitioners or to their attorneys. As previously announced, duplicate filings will be returned without the fees. The total adjudication process is expected to take approximately 8 to 10 weeks.

USCIS has already indicated that they are holding some filings in reserve to be run through the lottery again in order to compensate for the rejected cases. Thus, if the case has yet been receipted or rejected, there may still be a chance of it being selected. The common reasons for rejecting cases include unsigned petitions, incorrect filing fees, and lack of an LCA. Wait listed petitioners will ultimately receive a letter to inform them of that status.

Meanwhile, the USCIS has officially allowed F-1 students an opportunity to request change of status. As stated in our previous article ([H-1B Crisis: USCIS Announces That Caps Have Been Reached](#), April 11, 2008), the new regulation provide ameliorative relief to F-1 students who are caught in the Cap Gap. The new rule will automatically extend the validity of the student's Optional Practical Training (OPT), provided the I-129 indicated a change of status. This rule was announced on April 4, 2008, and many petitions were filed unwittingly before April 4, 2008 without a request for change of status.

USCIS has determined that it will allow petitions of F-1 students whose H-1B petitions were randomly selected to receive an H-1B visa number for FY2009 following the closure of the filing period, to now request a change of status on behalf of qualified beneficiaries, if such requests are received within 30 days of the issuance of the receipt notice.

To request a change of status in lieu of consular notification, petitioners (or authorized representatives) should send an e-mail with the request to the USCIS service center where their petition is pending within 30 days of the issuance of the receipt notice. Special e-mail address for each service center have been established specifically for this purpose. These addresses are listed below and are posted on USCIS' website. Petitioners should e-mail their requests for change of status in lieu of consular notification upon receipt of the notice so the agency has the request before completing H-1B petition adjudication. The requests should include the receipt number and both the petitioner's and beneficiary's name, date of birth, I-94 (Arrival/Departure Record) number, and Student and Exchange Visitor Information System (SEVIS) number. Please do not contact the service center about requesting a change of status until after receiving the receipt notice.

E-mail address for requesting change of status are:

- Vermont Service Center
 - Premium Processing cases: VSCPPCAPGAP.Vscppcapgap@dhs.gov
 - Non-Premium case: VSCNONPPCAPGAP.Vscnonppcapgap@dhs.gov
- California Service Center
 - Premium Processing cases: CSC.ppcapgap@dhs.gov
 - Non-Premium cases: CSC.nonppcapgap@dhs.gov

NOTE: If an F-1 student, who is the beneficiary of a selected 2009 H-1B petition, has a pending request to change to a status other than H-1B but now wants to file under the process outlined above, he or she should withdraw the previously filed change in accordance with established regulations.