



MAY 2014 IMMIGRATION UPDATE

Posted on May 1, 2014 by Cyrus Mehta

Headlines:

- 1. USCIS Holds Stakeholder Call on L-1A Site Visits** - The L-1 inspection program is being phased in and may be extended to initial petitions and/or L-1Bs in the future.
- 2. USCIS H-1B Premium Processing Has Begun for FY 2015 Petitions** - On April 28, 2014, USCIS began premium processing for H-1B petitions subject to the fiscal year 2015 cap, including H-1B petitions seeking an exemption from the cap for individuals who have earned a U.S. master's degree or higher.
- 3. Labor Dept. Releases FAQ on Staggered Crossings of H-2B Nonimmigrants in the Seafood Industry** - The Office of Foreign Labor Certification released a FAQ clarifying the agency's role with respect to implementation of a new provision on H-2B "staggered crossings" for seafood workers.
- 4. State Dept. Updates Visa Reciprocity Table for Ukraine** - The Department of State has updated the visa reciprocity table for Ukraine: B visa validity was updated from 60 months to 120 months.
- 5. H-1B Cap Reached for FY 2015** - USCIS received about 172,500 H-1B petitions during the filing period that began April 1, including petitions filed for the advanced degree exemption.
- 6. White House To Propose New Regs, Steps To Attract Entrepreneurs** - Among other things, proposed regulations will include rules authorizing employment for spouses of certain high-skill workers on H-1B visas and enhancing opportunities for outstanding professors and researchers.
- 7. Firm In The News...**

Details:

1. USCIS Holds Stakeholder Call on L-1A Site Visits

U.S. Citizenship and Immigration Services (USCIS) held a stakeholder call on April 24, 2014, on the implementation of L-1A site visits for intracompany transferee

managers and executives. The following are highlights from the call:

USCIS said that site visits are randomly selected and not based on suspected fraud or tips received. All L-1A extensions are included in the pool, not just new offices. The trigger is the filing of a Form I-129, Petition for a Nonimmigrant Worker, with USCIS. The agency noted that at the moment, there does not seem to be a method for including petitions filed at the border by Canadians or petitions filed at consulates based on a blanket L-1, but USCIS is trying to figure out how to include them as well.

The inspection program is being phased in and may be extended to initial petitions and/or L-1B specialized knowledge employees in the future, USCIS said. Inspection officers do not have authority to withdraw, approve, deny, or re-adjudicate a petition. Also, they do not have the authority to make a finding of fraud, but they can forward the results of the inspection to the Fraud Detection and National Security Directorate (FDNS) for further investigation. The inspection report assesses compliance with the L regulations and the result is either "verified" or "unverified." A supervisor reviews all inspection findings.

Attorneys may be present, but officers may not wait for them to show up. Participation in the inspection is voluntary, USCIS noted. The petitioner may at any time request that the inspection be stopped, and the inspection officer will stop and create the report based on the information obtained up to that point and through other methods (e.g., Internet, telephone, email, conversations with neighbors). Stopping the investigation will not necessarily result in an "unverified" conclusion, USCIS said.

Employers should be prepared to present all documents submitted with the original L-1A petition. One caller noted that employers are not required to maintain public access files in the L context and therefore may have difficulty immediately producing these documents. USCIS replied that the production expectation is the same for Ls as it is for Hs, but they will be allowed to follow up with the officer after the inspection to clarify and/or provide requested documents that were not readily available at the time of the inspection.

According to USCIS, each inspection will touch on issues easily addressed in many cases by information contained in the L-1A petition. Some of those issues noted on the call include:

- 6 Whether the facility employed by the business appears to be the one

described in the petition.

- 6 Whether the inspector made contact with the signatory of the petition or a human resources representative or management point of contact who could answer questions about the petition filed and the visa holder.
- 6 Whether the information in the petition is viable and whether the documents collected related to the presence of the organization as a business.
- 6 Whether the inspector was able to interview the beneficiary.
- 6 Whether the petition signatory, human resources representative, or manager interviewed had knowledge of the originally filed petition associated with the beneficiary.
- 6 Whether the inspector found the beneficiary to be working for the organization cited in the petition.
- 6 Whether the beneficiary was knowledgeable, forthcoming, and cooperative.
- 6 Whether the beneficiary is being compensated with the salary indicated in the petition.
- 6 Whether the beneficiary is performing the duties indicated in the petition.

[Back to Top](#)

2. USCIS H-1B Premium Processing Has Begun for FY 2015 Petitions

On April 28, 2014, U.S. Citizenship and Immigration Services (USCIS) began premium processing for H-1B petitions subject to the fiscal year 2015 cap, including H-1B petitions seeking an exemption from the cap for individuals who have earned a U.S. master's degree or higher. The annual cap is 65,000 H-1B visas, with an exemption for the first 20,000 petitions filed on behalf of those with a U.S. master's degree or higher.

USCIS provides premium processing service for certain employment-based petitions and guarantees a 15-calendar-day processing time.

The announcements are available at

<http://www.uscis.gov/news/uscis-h-1b-premium-processing-begin-april-28> and <http://www.uscis.gov/news/alerts/uscis-begin-premium-processing-h-1b-cap-subject-petitions-april-28-2014>.

[Back to Top](#)

3. Labor Dept. Releases FAQ on Staggered Crossings of H-2B Nonimmigrants in the Seafood Industry

The Consolidated Appropriations Act of 2014, signed into law on January 17, 2014, includes a provision permitting the staggered entry of H-2B workers in the seafood industry under certain conditions. The Office of Foreign Labor Certification (OFLC) released frequently asked questions (FAQ) clarifying the agency's role with respect to implementation of the new provision.

OFLC noted that all employers submitting an H-2B application for temporary employment certification must indicate their temporary need accurately, and include the starting and ending dates of need for the period in which they intend to employ H-2B nonimmigrant workers. The 2014 Appropriations Act permits employers in the seafood industry to bring into the United States, in accordance with an approved H-2B petition, nonimmigrant workers at any time during the 120-day period on or after the employer's certified start date of need if certain conditions are met. For employers to use this provision, H-2B nonimmigrant workers must show to consular officers and to U.S. Customs and Border Protection officers, as necessary, the employer's attestation that the conditions contained in the statute have been met.

Any seafood industry employer that permits or requires its H-2B nonimmigrant workers to enter the United States between 90 and 120 days after the certified start date of need must complete a new assessment of the local labor market during the period that begins at least 45 days after the certified start date of need and ends before the 90th day after the certified start date of need, which must include:

- a) Listing job orders in local newspapers on two separate Sundays;
- b) Placing new job orders for the job opportunity with the State Workforce Agency serving the area of intended employment and posting the job opportunity at the place of employment for at least 10 days; and
- c) Offering the job to any equally or better qualified U.S. worker who

applies for the job and who will be available at the time and place of need.

OFLC noted that a seafood industry employer must prepare a written, signed attestation indicating its compliance with the statutory conditions. Employers must download the official attestation, review the conditions contained in the attestation, and indicate compliance by signing and dating it. Such employers must provide each of their H-2B nonimmigrant workers seeking entry into the United States a copy of the signed and dated attestation, with instructions that the worker must present the documentation upon request.

This provision expires on September 30, 2014. Accordingly, no staggered entry of H-2B workers after that date will be permitted, the Department said. The FAQ is available at

http://www.foreignlaborcert.doleta.gov/pdf/FAQs_Seafood_Staggering_2014_Appr_ops_final_040114.pdf. The official attestation is available in PDF format on OFLC's website at <http://www.foreignlaborcert.doleta.gov/form.cfm>.

[Back to Top](#)

4. State Dept. Updates Visa Reciprocity Table for Ukraine

The Department of State has updated the visa reciprocity table for Ukraine: B visa validity was updated from 60 months to 120 months.

Recent updates are listed at

<http://travel.state.gov/content/visas/english/fees/reciprocity-whats-new.html>.

[Back to Top](#)

5. H-1B Cap Reached for FY 2015

U.S. Citizenship and Immigration Services (USCIS) announced that the fiscal year (FY) 2015

H-1B cap was reached as of April 7, 2014. The agency will reject and return with the filing fees non-duplicate cap-subject petitions that were not selected.

USCIS received about 172,500 H-1B petitions during the filing period that began April 1, including petitions filed for the advanced degree exemption. On April 10, 2014, USCIS completed a computer-generated random selection process, or lottery, to select enough petitions to meet the 65,000 general-category cap and 20,000 cap under the advanced-degree exemption. The agency conducted the selection process first for the advanced-degree exemption. All advanced-degree

petitions not selected then became part of the random selection process for the 65,000 limit.

USCIS will continue to accept and process petitions that are otherwise exempt from the cap. Petitions filed on behalf of current H-1B workers who have been counted previously against the cap will not be counted toward the congressionally mandated FY 2015 H-1B cap. USCIS will continue to accept and process petitions filed to:

- extend the amount of time a current H-1B worker may remain in the United States;
- change the terms of employment for current H-1B workers;
- allow current H-1B workers to change employers; and
- allow current H-1B workers to work concurrently in a second H-1B position.

Premium processing. USCIS also announced that it would begin premium processing for H-1B cap cases by April 28, 2014. USCIS provides premium processing service for certain employment-based petitions and guarantees a 15-calendar-day processing time.

USCIS will continue to accept [Form I-907, Request for Premium Processing Service](#), with fee, concurrently with the [Form I-129, Petition for a Nonimmigrant Worker](#), while premium processing is unavailable. Petitioners may also upgrade a pending H-1B cap petition to premium processing once USCIS issues a receipt notice.

While the Form I-797, Notice of Action (receipt notice), indicates the date USCIS received the premium processing fee, the 15-day processing period will begin by April 28. This allows USCIS to take in the anticipated high number of filings, conduct the lottery to determine which cases meet the cap, and prepare the volume of cases for premium and regular processing.

The 15-day processing period for premium processing service for H-1B petitions that are not subject to the cap, or for any other eligible classification, continues to begin on the date that the request is received.

F-1 students and the "cap-gap." The period of time when an F-1 student's status and work authorization expire through the start date of his or her approved H-1B employment period is known as the "cap-gap."

The cap-gap occurs because an employer may not file, and USCIS may not

accept, an H-1B petition submitted more than six months in advance of the date of actual need for the beneficiary's services or training. As a result, the earliest date that an employer can file an H-1B cap-subject petition is April 1, for the following fiscal year, starting October 1. If USCIS approves the H-1B petition and the accompanying change of status request, the earliest date that the student may start the approved H-1B employment is October 1.

Current regulations allow certain students with pending or approved H-1B petitions to remain in F-1 status during the cap-gap period. This is referred to as filling the "cap-gap," meaning the regulations provide a way of filling the "gap" between the end of F-1 status and the beginning of H-1B status that might otherwise occur if F-1 status is not extended for qualifying students.

USCIS's announcement is available at

<http://www.uscis.gov/news/uscis-reaches-fy-2015-h-1b-cap-0>. Information on premium processing is available at

<http://www.uscis.gov/news/alerts/uscis-begin-premium-processing-h-1b-cap-subject-petitions-april-28-2014>. Information on cap-gap issues is available at

<http://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/extension-post-completion-optional-practical-training-opt-and-f-1-status-eligible-students-under-h-1b-cap-gap-regulations>.

[Back to Top](#)

6. White House To Propose New Regs, Steps To Attract Entrepreneurs

The Obama administration released a fact sheet on April 7, 2014, summarizing efforts to strengthen entrepreneurship, including a series of proposed regulations and other steps.

Among other things, the Department of Homeland Security is set to publish soon several proposed rules intended to make the United States more attractive to talented foreign entrepreneurs and other high-skill immigrants. The proposed regulations will include rules authorizing employment for spouses of certain high-skill workers on H-1B visas and enhancing opportunities for outstanding professors and researchers.

Also planned is the launch of "[Entrepreneur Pathways](#)," an online resource center "that gives immigrant entrepreneurs an intuitive way to navigate opportunities to start and grow a business in the United States," the fact sheet says.

Additionally, the Department of State will launch two new exchange programs for entrepreneurs in the Western hemisphere. The Small Business Network of the Americas (SBNA) Fellowship Program will connect incubators across the hemisphere "to share best practices in entrepreneurial development and unlock market access for small businesses across the region," the fact sheet states. The Professional Fellows Program will bring Salvadoran, Guatemalan, and U.S. officials together for a six-week internship and training program focusing on professional development, problem-solving, and networking.

The White House fact sheet is available at

<http://m.whitehouse.gov/the-press-office/2014/04/07/fact-sheet-strengthening-entrepreneurship-home-and-abroad>.

[Back to Top](#)

7. Firm In The News

Cyrus Mehta has again been ranked No. 2 in 2014 among the most highly regarded corporate immigration lawyers in the world by Who's Who Legal, a strategic research partner of the ABA Section on International Law,

<http://whoswholegal.com/news/analysis/article/31331/legal-marketplace-analysis-corporate-immigration-2014/>

David Isaacson was a panelist at the April 7, 2014, meeting of the American Immigration Lawyers' Association (AILA) New York Chapter, hosted by the AILA New York Chapter Federal Practice Committee, of which he is co-chair. He provided an "Update on Significant Immigration Decisions of the Supreme Court and the U.S. Courts of Appeals for the Second and Third Circuits, March 2013-April 2014."

[Back to Top](#)