

The Waiting Begins: Will Your H-1B Case Be Selected in the Lottery This Year?

Labor & Employment Law Update

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U.S. Citizenship and Immigration Services (USCIS) announced on April 7, 2016, that it received significantly more H-1B petitions than allowed under the statutory cap for fiscal year (FY) 2017. U.S. businesses use the H-1B program to employ foreign workers in occupations that require highly specialized knowledge in fields such as science, engineering and computer programming. The number of petitions filed this year, 236,000, exceeded last year's high of 233,000 petitions.

The USCIS began to issue receipt notices using the random, computer generated selection process or "lottery" for H-1B petitions on April 9, 2016. The random selection process is completed for the two categories of H-1B petitions: (1) U.S. Master's or higher degree petitions (20,000 petitions accepted) and (2) Regular H-1B cap subject cases (65,000 petitions accepted). The USCIS will reject and return all H-1B petitions not selected in the lottery. The rejected H-1B petitions will be returned with uncashed checks to the employer or attorney of record. For regularly filed H-1B petitions, it will typically take the USCIS a few weeks to begin issuing receipt notices in May. USCIS will begin adjudicating petitions filed under the premium processing clock no later than May 16, 2016. Normally, filing a petition with Premium Processing means it will be adjudicated within fifteen calendar days, but for cap subject petitions USCIS cannot honor this time frame.

USCIS will continue to accept and process petitions that are exempt from the H-1B cap. For example, petitions filed on behalf of current H-1B workers who have previously been counted against the cap will not be counted towards the FY 2017 H-1B cap. USCIS will continue to accept petitions filed in the following situations:

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