

H-1B Cap Reached Again within First Five Business Days – But Fewer Petitions Received than the Last 4 Years

April 19, 2017

On April 7, 2017, the U.S. Citizenship and Immigration Services (USCIS) announced that it received more H-1B petitions than visas available under the statutory cap of 65,000 general-category and 20,000 U.S. Master's for the fiscal year.

This continues the five-year trend in which the H-1B quota has been reached during the first five business days of April. However, this is the first time since 2015, USCIS received fewer than 200,000 H-1B petitions during the filing period.

We saw a nearly 16 percent decrease from the 236,000 petitions that USCIS received during last year's filing period, perhaps caused by employers' growing concern and uncertainty in today's volatile immigration environment.

Before 2014, the last time the cap had been reached during the first week was in April 2008 for FY 2009. The decreased demand between FY 2009 and FY 2014 was due to the effects of the financial crises. *Except for this year*, H-1B petition submissions have increased each year since 2014, as outlined below:

FY 2018	199,000
FY 2017	236,000
FY 2016	233,000
FY 2015	172,500
FY 2014	124,000

On April 11, USCIS ran the computer-generated lottery to select enough petitions to meet the 65,000 general-category cap and the 20,000 Master's cap. As such, USCIS began issuing Receipt Notices for those cases that "won" the lottery this week. They are slowly "trickling" in. Once the case is "receipted" it still must undergo review and adjudication by USCIS. The processing of H-1B cap cases will likely take several months as USCIS has suspended premium processing.

As previously advised on March 3, USCIS announced it has temporarily suspended premium processing for all H-1B petitions, including cap-exempt petitions, for up to six months. See our March 6 client alert [here](#).

Premium Processing is an optional service offered by USCIS which guarantees expedited processing of certain employment-based petitions, for an additional fee of \$1225, thereby significantly decreasing processing times.

As a reminder, USCIS will continue to accept and process petitions that are otherwise exempt from the cap, as well as petitions filed on behalf of current H-1B workers who have been counted previously against the cap. Thus, 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.

Any H-1B petitions not selected in the FY 2018 lottery will be returned with their filing fees.

We appreciate that, during this period, employers and foreign national employees will be anxious while awaiting the lottery results. Proskauer will continue to update its clients directly and through alerts as to H-1B cap developments.