

Additional H-1B Visas Finally Available

2005-05-06

The US Citizenship and Immigration Services (USCIS) published in yesterday's Federal Register its interim rule on filing petitions for the 20,000 additional H-1B visas for fiscal year 2005 (FY05) that were part of the Omnibus Appropriations Act for FY05. Despite prior announcements to the contrary, the 20,000 H-1B visas that exceed the Congressionally mandated annual cap of 65,000 are reserved for foreign nationals who have a master's degree or higher from a US institution. This long-awaited interim rule will go into effect on May 12, 2005, which is the first date the petitions for these visas will be accepted. All such petitions must be sent to the Vermont Service Center by mail or courier service, as no e-filings will be accepted, and no other service center is authorized to issue the visas.

USCIS will allow applicants to utilize premium processing for these H-1B petitions, and it is expected that the 20,000 visas will be exhausted quickly. Therefore, in the event that FY05 visas are no longer available, USCIS will treat all FY05 H-1B applications as applications for FY06, and applicants wishing only to apply for FY05 visas will need to so indicate. USCIS has specified that, for petitions received on the "final receipt date"—the date that USCIS receives the number of petitions necessary to meet the cap—a process of random selection will apply. If the cap is reached on the first day that such petitions are accepted, which is possible, 20,000 petitions will be randomly selected from the filings received on that first day and the following day.

Petitioners who have already filed H-1B petitions for FY06 may "upgrade" their petition and seek an FY05 H-1B visa by submitting: (1) a letter of request, (2) a copy of the approval notice or receipt notice for their FY06 petition, or a copy of the first two pages of the I-129 if a receipt notice has not yet been received, and (3) a copy of the certified Labor Condition Application.

For FY06 and subsequent years, USCIS will exempt from the cap the first 20,000 H-1B petitions for applicants with a master's or higher degree from a US institution.

For more information on this or other immigration matters, contact either of the authors listed above.