
FY 2009 H-1B Cap Exhausted and Some Relief for H-1B Applicants on OPT

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The USCIS announced on April 8, 2008, that it had received enough H-1B applications to exhaust the fiscal year 2009 H-1B cap and the master's degree exemptions, thereby effectively closing the eligibility period for fiscal year 2009 H-1B visas, which begins on October 1, 2008. Because the USCIS received more than enough applications in both categories of H-1B applications, all petitions received through April 7, 2008, that are exempt from the cap because they are on behalf of foreign nationals with advanced degrees from US institutions of higher education will be subject to a computer-generated random selection process, which will select the 20,000 petitions exempt from the H-1B cap. All remaining petitions will be pooled for a second computer-generated random selection process, which will select from all cap-subject petitions received through April 7, 2008, until the 65,000 cap is reached. Because of the high number of petitions, the USCIS has not yet determined when it will be ready to begin the selection process.

The USCIS announced last week that it intends to publish in the Federal Register an interim final rule automatically extending the period of stay and work authorization for F-1 students with pending H-1B petitions who currently are on an authorized period of Optional Practical Training (OPT). This would alleviate the "cap gap" these individuals would otherwise experience between the time their employment authorization expires and the beginning of their H-1B status (October 1, 2008).

The interim final rule also would extend the authorized OPT period from 12 to 29 months for qualified F-1 non-immigrant students with a degree in science, technology, engineering or mathematics. To qualify, the F-1 individual must be employed in a job directly related to the individual's major area of study by a US employer enrolled in the E-Verify program. The interim final rule will become effective as soon as it is published in the Federal Register, which is expected to occur in the near future.

Links to the USCIS press release and the text of the interim final rule are below.

[USCIS Press Release](#)

[Interim Final Rule](#)

