
The H-1B CAP Has Been Reached

By Michael P. Nowlan, James E. Morrison / Apr 07, 2017

On April 7, 2017, U.S. Citizenship and Immigration Services ("USCIS") announced that between April 3, 2017 and April 7, 2017, USCIS received more than enough applications for new H-1B visas for the 2018 government fiscal year. The announcement can be found [here](#). Applications exceeded the quota, for both the regular 65,000 limit (also called a "cap") and the additional 20,000 limit for persons who have an advanced degree (more than a bachelor degree) from a U.S. university. Because more applications than the quota permits were received for both Bachelor's and Master's cap cases in the first five business days of April, USCIS will use a lottery system to randomly select the number of petitions required to reach the numerical limit. USCIS will reject petitions that are subject to the cap and are not randomly selected.

We anticipate that it will take USCIS 30 to 60 days to process the petitions by lottery and issue either receipt notices indicating acceptance in the lottery, or rejection notices for those not selected in the lottery. If an H-1B petition was filed on your behalf by Clark Hill, we will send you an e-mail when we receive either a receipt notice for your case indicating your case was accepted for processing, or advising you that your case was rejected. Because immigration holds back a certain number of petitions to ensure the full quota numbers are used ("wait listed"), notices of acceptance or rejection for some cases may not be received for two to three months for a very small number of applications.

The H-1B is a temporary work visa used by U.S. employers for hiring foreign nationals to perform jobs which require a bachelor degree or higher (professionals), and the employer must prove it will pay the employee the same or more than a similar worker would earn for a comparable job in the geographic location. The government's fiscal year runs from October 1st until September 30th. H-1B applications can be filed up to six months before October 1st. For more on H-1B visas, see the [Clark Hill website](#).

Persons who have been issued an H-1B under a previous cap, for work with a private employer and have not used all of their time on an H-1B (generally limited to six years), and persons who work for or at a US university or qualifying research organization (the work must be in furtherance of the institution's mission), are exempt from the H-1B cap. Persons who wish to apply for an H-1B visa under the fiscal year 2019 cap may apply beginning April 1, 2018 for a start date in H-1B status of October 1, 2018.

If you have any questions, please contact James E. Morrison at (202) 572-8670 | jmorrison@clarkhill.com, Michael P. Nowlan at (313) 965-8666 | mnowlan@clarkhill.com, or another member of Clark Hill's Immigration practice group.