

PUBLICATION

Immigration Update: H-1B CAP Reached!

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Time to Win the Lottery: H-1B CAP Reached!

The H-1B CAP season has come to a close and both employers and employees now anxiously await confirmation that their filings have been accepted for processing. The statutory cap of 65,000, as well as the 20,000 cap under the advanced degree exemption, both were far exceeded for fiscal year 2015 as approximately 172,500 petitions were received within the first week. On April 10, 2014, U.S. Citizenship and Immigration Services (USCIS) completed a computer-generated random selection process to select sufficient petitions to meet the 65,000 and 20,000 limits and began rejecting via U.S. mail the remaining 85,000-plus petitions along with their filing fees.

Practitioners and employers are now forced to watch their mail deliveries with the hope opposite that which high school students face during college application season: that they receive the “small envelope” with a USCIS receipt notice showing the H-1B petition was accepted rather than the “big envelope” with the entire rejected petition and filing fees.

What do you do if your H-1B Petition is rejected this year? Other options may be available to potential employees to help weather the time until next CAP season starts October 1, 2015. Before giving up for a year, it is definitely worth exploring some other possibilities:

- Students working under Optional Practical Training (OPT) may have options for extension based on their degree and nature of employment:
<http://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/extension-post-completion-optional-practical-training-opt-and-f-1-status-eligible-students-under-h-1b-cap-gap-regulations>
- Canadian or Mexican nationals may be able to pursue TN, or non-immigrant, classification:
<http://www.uscis.gov/working-united-states/temporary-workers/tn-nafta-professionals>
- Australians can pursue E-3 classification for specialized occupations requiring a bachelor's degree:
<http://www.uscis.gov/working-united-states/temporary-workers/e-3-certain-specialty-occupation-professionals-australia>
- L-1B or L-1A status may be available for individuals who have qualifying experience in a specialized knowledge or managerial position with a related entity:
<http://www.uscis.gov/working-united-states/temporary-workers/l-1a-intracompany-transferee-executive-or-manager>
<http://www.uscis.gov/working-united-states/temporary-workers/l-1b-intracompany-transferee-specialized-knowledge>

Other options may be available for individuals with extraordinary ability under an O classification, or under an E classification for investors or foreign companies from countries covered by a treaty of commerce and navigation with the U.S. that engage in a substantial amount of business in the U.S.

The "[Ways to Work](#)" page of our website provides further details about requirements for these and other classifications that may offer a solution.

Ultimately, that big envelope in your mailbox from USCIS doesn't necessarily mean the end of the journey, but alternative solutions may require some creative thinking.