

USCIS Announces Rules for the Special Allotment of 20,000 H-1B visas for FY2005

On May 5, 2005, the USCIS will issue the long awaited guidelines for filing for the special allocation of 20,000 H-1B visas for FY2005. Having an advance copy of the 50 page regulations, we are able to provide you with a brief overview of the special rules that will apply to these 20,000 H-1B visas.

A brief summary of the special rules

1. The 20,000 H-1B visas will be limited to holders of **US master's degrees** or higher as permitted in the statute.
2. Filing begins on May 12, 2005. The final rules will be published in Federal Register on May 5, 2005 and take effect 5 business days after date of publication.
3. The special allotment of 20,000 H-1B visas will apply prospectively. The CIS will **not** consider any petitions filed before May 12, 2005.
4. Filing will take place, for the special allotment in FY2005, at a central location in Vermont.
5. E-filing (electronic filing) is precluded for the special allotment and temporarily suspended for FY2006 as well.
6. Upgrading a prior filed FY2006 petition (one filed for a October 1st 2005 start date) to one filed against the special allotment for FY2005 is possible and no new filing fee is required.
7. An upgraded petition will be treated as having been received on the date of filing the Upgrade Request, not the original date of filing the FY2006 petition.
8. The CIS uses a straight FIFO (first in - first out) procedure for deciding which petitions are examined and approved. However, starting in FY2005 for the 20,000 special allotments and going forward, when it is getting close to reaching the cap, the CIS will institute a lottery system to select the petitions to be approved:
 - a. the CIS will notify the public of the date it believes it has received the necessary number of petitions to exhaust the cap (the "final receipt date"),
 - b. from among all the petitions received on the final receipt date, the CIS will randomly select the precise number of petitions necessary to hit the cap,
 - c. if the CIS predicts the cap will be hit on the first day of the Fiscal Year (October 1st for FY2006 or May 12th for the 20,000 special allotment), then they will include in the lottery selection all petitions received on October 2nd and May 13th respectively.
9. Premium processing is available for the FY2005 special allotment.
10. Fraud prevention fee (\$500.00) must be on a separate check.
11. Premium processing fee (\$1000.00) must be on a separate check.
12. If you apply for FY2005 special allotment and do not receive a visa, the CIS assumes you want a FY2006 visa with October 1, 2005 as a start date.