

## USCIS Announces H-1B Cap Reached

February 18, 2004

Announcement: On February 17, 2004 the USCIS announced that it will no longer accept petitions for new H-1B benefits for Fiscal Year 2004. Current law (8 USC § 1184(g)(1)(A) establishes an maximum of 65,000 annual approvals from the US Citizenship and Immigration Service of aliens newly classified to be in H-1B status. The US government operates on a fiscal year that begins October 1 and ends September 30. As a result, no additional H-1B petitions for “new” H-1B benefits can be filed that contain a start-date earlier than October 1, 2004.

Despite the H-1B cap being reached so early in FY2004, not every H-1B petition is affected by this announcement. As mentioned, only “new” H-1B benefits are subject to the Cap. Extension petitions are not subject to the cap. As a result, any person currently in valid H-1B status may have his/her employer file to extend his/her H-1B status, regardless of the H-1B cap. Additionally, any person who has been approved for H-1B status within the past six years, and who has not spend more than 1 year outside the US since receiving H-1B approved status, is exempt from the Cap

Further, certain employers are exempt from the limitations of the Cap, even in cases of petitions filed for “new” H-1B benefits. These exempt employers include:

- (A) an institution of higher education (4-year college or university);
- (B) a nonprofit entity related or affiliated with an institution of higher education; or
- (C) a nonprofit research organization;
- (D) or a governmental research organization.

Also exempt from the H-1B Cap are petitions for “concurrent” H-1B employment, as well as physicians who have obtained an IGA waiver of the 2-year home residence requirement. Concurrent H-1B petitions are those that request approval for an individual to work for two or more employers simultaneously.

### H-1B Petitions Can Still Be Filed

Employers who missed the FY2004 H-1B Cap can still file their H-1B petitions with a future employment start date of October 1, 2004 or later. The only limitation to filing this type of petition is that it cannot be filed more than 180 days in advance of the start date. This translates into a filing date of April 4, 2004 or later.