



QUESTIONS AND ANSWERS

March 28, 2000

Fiscal Year 2000 H-1B Cap

1. What is the cap (numerical limitation) on the H-1B nonimmigrant classification?

The Service may not approve more than 115,000 H-1B petitions during Fiscal Year 2000, October 1, through September 30. In FY 2001, the H-1B cap is set by law at 107,500.

2. Has the Service reached the cap for FY2000?

No. However, based on the number of H-1B petitions already approved and the number of H-1B petitions pending at the four Service Centers, there appears to be a sufficient number of H-1B petitions pending to reach the cap for FY2000. Therefore, as of March 21, 2000, INS no longer accepts H-1B petitions for employment prior to October 1, 2000.

3. What happens to H-1B petitions that are currently pending?

All petitions received by INS as of March 21, 2000 will be adjudicated in the order they were received. They will not be returned. INS will continue to record approved petitions towards the cap until it reaches 115,000. After that, INS will still adjudicate the remaining petitions it has received. Those that are approved will be given validity dates of October 1, 2000 and will be counted towards the FY 2001 cap of 107,500.

4. What happens to cases for which a Request for Evidence (RFE) has been issued to the petitioner, or for which a petitioner's response to an RFE is pending, as of March 20, 2000?

Only when INS receives a response to an RFE is the case returned to the processing queue according to its original filing date. In cases where the Service does not receive an RFE response until after the FY 2000 cap has been reached, the case will be recorded against the FY 2001 cap and be approved for H-1B employment commencing October 1, 2000.

5. How do cases pending before the Administrative Appeals Office (AAO) fit into the processing queue?

Priority will be given to approved petitions in the order they were received. However, if a given case is not approved by the AAO before the cap is reached, the case will be recorded against the FY 2001 cap.

6. What should a petitioner do if it misses the FY2001 cap and an H-1B employment commencement date of October 1, 2000, is not acceptable?

The petitioner should request in writing to withdraw the petition. The request should include the petitioner's and beneficiary's names as well as the receipt number issued to the case. The withdrawal request should be faxed to:

Immigration and Naturalization Service, Immigration Services Division, H-1B Withdrawal Section, Washington, DC 20536. Fax number: 202-514-2093.

7. Will the Service refund the filing fee if a petition is withdrawn?

No. Based on published regulations, INS cannot refund the filing fee.

8. Will the FY2000 H-1B cap affect amended petitions or petitions for extension of stay?

INS will continue to process petitions filed for current H-1B workers, who remain in valid H-1B status by maintaining their approved H-1B employment, since they are not affected by the annual H-1B cap. This includes petitions to:

- Extend the stay of current H-1B workers,
- Amend the terms of employment of current H-1B workers,
- Allow current H-1B workers to change H-1B employers, and
- Allow current H-1B workers to work concurrently in another H-1B position.

9. Will the duration of status for F and J beneficiaries of H-1B petitions be extended?

Yes. Any student (F nonimmigrant) or exchange visitor (J nonimmigrant) whose employer has filed a petition for change of nonimmigrant status to H-1B prior to expiration of his or her F-1 or J-1 status, will have the duration of that status extended either until October 1, 2000 or until the date as of which INS approves the change of status, whichever is later. This also applies to dependents of the eligible F or J nonimmigrants.

10. When will INS publish the final rules concerning the extension of F and J non-immigrants?

The Service has reviewed public comments to the interim rule published on June 15, 1999, in the *Federal Register* and expects to publish a final rule by the end of FY2000.

11. Can F and J beneficiaries of timely filed H-1B petitions that have missed the FY2000 cap commence employment prior to October 1, 2000?

No. An F or J nonimmigrant whose duration of status has been extended under this provision may not be employed in the United States, or accept unpaid employment, prior to the date as of which his or her change of status to H-1B is approved. He or she may, however, accept a signing bonus if it is common in the prospective H-1B employer's company for signing bonuses to be paid to candidates selected for similar positions, without regard to immigration status.

12. When may a petition for new H-1B employment for FY2001 be filed?

An H-1B petition may be filed 6 months prior to the requested commencement date for the H-1B employment. Accordingly, the earliest a new petition for employment commencing on October 1, 2000, or later may be filed is April 1, 2000.

13. Will the Service amend its procedures for pending petitions if Congress passes legislation to raise the cap?

If the President signs legislation to raise the H-1B cap before the end of this fiscal year, the Service will implement all pertinent provisions of the new law. Meanwhile, the Service will follow the orderly procedures for the remainder of this fiscal year that were explained in the *Federal Register* on March 21, 2000.