

# Immigration Related Government Updates: 1. USCIS Announces That H-1B Cap May Be Reached Early In the First Week Of April; 2. Sequester May Delay Government Processing of Immigration-related Benefits

March 19, 2013

## **1. USCIS Announces FY 2014 H-1B Cap Update: *Cap May Be Reached During the First Week of Filing***

On Friday, March 15, USCIS announced how it plans to process FY 2014 H-1B cap filings. In the USCIS press release, USCIS indicated that it was preparing for the likelihood that the H-1B cap may be reached during the April 1 – April 5 filing period. The annual numerical limitation for H-1B visa numbers is 65,000, with an additional 20,000 reserved for individuals with U.S. Masters or other U.S. advanced degrees.

**H-1B Demand:** It was in April 2008 that the H-1B cap was last reached during the first week. The demand for H-1B has steadily increased in the last years, in part due to the improving economy and availability of jobs. However, the increase in H-1B cap filings is also attributed to employers resorting to the H-1B visa category as a more reliable alternative to the L-1B specialized knowledge visa for intra-company transferees. USCIS and U.S. Consulates abroad alike have increased the level of scrutiny of L-1B petitions, making filing H-1B petitions more attractive to employers. The annual numerical limitation for H-1B visa numbers is 65,000, with an additional 20,000 reserved for individuals with U.S. Masters or other U.S. advanced degrees.

<b>Fiscal Year H-1B Filing</b>	<b>Earliest Filing Date</b>	<b>Date Cap Reached</b>
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<b>FY 2013</b>	<b>April 2, 2012</b>	<b>June 11, 2012</b>
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<b>FY 2012</b>	<b>April 1, 2011</b>	<b>November 22, 2011</b>
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<b>FY 2011</b>	<b>April 1, 2010</b>	<b>January 26, 2011</b>
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<b>FY 2010</b>	<b>April 1, 2009</b>	<b>December 21, 2009</b>
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<b>FY 2009</b>	<b>April 1, 2008</b>	<b>April 2008</b>
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## ***USCIS Guidelines for Filings:***

**In order to handle the volume and receipt of this year's H-1B filings, USCIS provided the following guidelines:**

- As in recent years, USCIS will continue to accept H-1B cap filings from April 1 to April 5, before determining whether the cap is reached.
- A petition will be considered "accepted" for processing on the date the USCIS receives a properly filed petition with correct fees. The postmark of the petition will not confer the receipt date.
- If the cap is met between April 1 and April 5, USCIS will implement a lottery system to randomly select and receipt in H-1B cap subject petitions.
- USCIS announced a new procedure for premium processing cases. Premium processing of H-1B filings will begin late this year. The premium processing, 15-day clock, will begin on April 15, 2013.
- USCIS will provide frequent, online updates on the H-1B cap count.

***Premium Processing Begins April 15th:*** We recommend that employers utilize premium processing for H-1B cap cases when possible. As a result of the new premium processing procedure for H-1B cap-subject filings, receipts may not be issued until April 15th or later. Thus, employers and H-1B beneficiaries may not know whether their petition was accepted until mid April. Further, USCIS will not issue H-1B approvals, decisions or RFEs (requests for evidence) until April 29th. With this extended adjudication period, individuals who have applied to change status to H-1B (i.e., F-1 student to H-1B; L-1 to H-1B, etc) might *not* be able to travel internationally during the whole month of April (or longer if an RFE is issued) or the change of status component of the application will be considered abandoned.

We encourage employers to reach out to our Immigration & Nationality group if they have questions. We will continue working with our clients to ensure that H-1B petitions are prepared and ready for filing by April 1st.

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## **2. The Sequester: *Preparing for Potential Delays and Impact on U.S. Travel and Immigration Processing***

On March 1, 2013, across-the-board budget cuts in federal spending, amounting to \$1.2 trillion over the next 10 years, went into effect. Known as the Sequester, this dramatic reduction in spending is expected to impact domestic and federal programs resulting in the loss of services and furloughs of federal employees. If Congress is unable to strike a deal on how to resolve the federal deficit, federal agencies that facilitate travel to the United States and administer immigration-related services will experience serious delays and service impacts.

**U.S. Citizenship and Immigration Services (USCIS) Petitions:** Unlike other federal agencies, USCIS is a fee-based operation and not funded by tax dollars. As such, the Sequester is likely not to impact USCIS's processing of immigration benefits and applications. For example, the H-1B mandatory \$500 training fees, tagged to fund skills training and STEM education grants, is considered protected from sequestration. Last week, the Brookings Institution published a policy brief that suggested that the government should more aggressively utilize these H-1B training funds and grants to better fund local programs that train the U.S. workforce. Any such initiative would proceed unimpeded by financial considerations.

**Travel to the United States:** The U.S. Customs and Border Patrol (CBP) announced in a March press release that ports of entry to the U.S. will lose several thousand CBP officers. While CBP emphasized that security remained its priority, it warned that travelers should expect increased wait times and reduced hours of services at airports, seaports, and land border crossings. Trusted traveler programs, including Global Entry, SENTRI, and Nexus, will continue to generally allow for faster processing of inspection and admission at the ports. However, it is anticipated there will be a surge in trusted traveler applications, resulting in longer approval times for new applicants. Travelers making TN or L-1 border applications should anticipate delays and make travel arrangements accordingly.

**Applications for U.S. Visas:** In a February letter to the Committee of Appropriations, Secretary of State John Kerry outlined how the sequester would seriously impair critical programs and services operated by the U.S. Department of State (DOS), including visa applications processed by U.S. consular posts. In a February 27 press briefing, DOS particularly highlighted that U.S. Consulates in India, China and Brazil, which had seen a recent improvement in processing times, may now be set back due to the budget cuts. Foreign travelers should anticipate longer wait times for visa appointments and processing.

**PERM Labor Certifications, Prevailing Wage Determinations, & Labor Condition Applications (LCA):** The U.S. Department of Labor has not made a formal announcement regarding the impact of the budget cuts on the processing of PERM labor certifications, prevailing wage requests, or LCAs. However, employers and the business immigration community are bracing for potential delays in processing times due to reduction in DOL staffing. When potential government shut-downs loomed in the recent past, the DOL advised it would issue guidance on its website or the federal register. We will provide updates as developments occur.

The next key date to watch is March 27, 2013. Federal appropriations that fund current federal operations are set to expire on this date, and the federal government may be forced to suspend or temporarily shut down many government services. The Proskauer Immigration and Nationality Group will keep you informed of this developing story.