



Cap Count for H-1B and H-2B Workers for Fiscal Year 2010

Please see the information relating to H-1B Program Changes for FY 2010 in the Related Links section of this page.

What is a "Cap"

The word "Cap" used in this Update refers to annual numerical limitations set by Congress on certain nonimmigrant visa classifications, e.g., H-1B and H-2B. Caps control the number of workers that can be issued a visa in a given fiscal year to enter the United States pursuant to a particular nonimmigrant classification. Caps also control the number of aliens already in the United States that may be authorized to change status to a cap-subject classification.

H-1B

The H-1B visa program is used by some U.S. employers to employ foreign workers in specialty occupations that require theoretical or technical expertise in a specialized field and a bachelor's degree or its equivalent. Typical H-1B occupations include architects, engineers, computer programmers, accountants, doctors and college professors. The H-1B visa program also includes certain fashion models of distinguished merit and ability and up to 100 persons who will perform services of an exceptional nature in connection with Department of Defense (DOD) research and development projects or coproduction projects. The current annual cap on the H-1B category is 65,000. Not all H-1B nonimmigrants are subject to this annual cap. Please note that up to 6,800 visas may be set aside from the cap of 65,000 during each fiscal year for the H-1B1 program under the terms of the legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements. Unused numbers in this pool are made available for H-1B use for the next fiscal year.

H-1B Employer Exemptions

H-1B nonimmigrants who are employed, or who have received an offer of employment, by institutions of higher education or a related or affiliated nonprofit entity, as well as those employed, or who will be employed, by a nonprofit research organization or a governmental research organization are exempt from the cap.

H-1B Advanced Degree Exemption

The H-1B Visa Reform Act of 2004 makes available 20,000 new H-1B visas for foreign workers with a Master's or higher level degree from a U.S. academic institution. For each fiscal year, 20,000 beneficiaries of H-1B petitions on behalf of persons who hold such credentials are statutorily exempted from the cap.

Duplicate H-1B Petitions Filed Requesting Fiscal Year 2010 Employment

USCIS will deny or revoke all petitions filed by an employer for the same H-1B worker if more than one filing is discovered. If multiple petitions are discovered, whether one or more such petitions are approved, USCIS will data enter all those duplicative petitions, retain all fees, and either deny the petitions or, if a petition was approved, revoke the petition. The petitions will not be returned to the petitioner.

As of June 5, 2009, approximately 44,400 H-1B cap-subject petitions and approximately 20,000 petitions qualifying for the advanced degree cap exemption had been filed. USCIS will continue to accept both cap-subject petitions and advanced degree petitions until a sufficient number of H-1B petitions have been received to reach the statutory limits, taking into account the fact that some of these petitions may be denied, revoked, or withdrawn.