



U.S. Citizenship
and Immigration
Services

Press Release

May 4, 2005

USCIS IMPLEMENTS H-1B VISA REFORM ACT OF 2004; ANNOUNCES NEW H-1B PROCEDURES FOR FY 2005 AND FY 2006

WASHINGTON, DC – U.S. Citizenship and Immigration Services (USCIS) has forwarded to the *Federal Register* new regulations implementing sections of the H-1B Visa Reform Act of 2004. The new regulations take effect upon publication in the *Federal Register* and change the H-1B filing procedures for FY 2005 and for future fiscal years. The regulations make available 20,000 new H-1B visas, only for foreign workers with a minimum master's level degree from a U.S. academic institution, in addition to the Congressionally mandated annual cap of 65,000 H-1B visas.

The H-1B visa program is utilized by some U.S. businesses to employ foreign workers in specialty occupations that require theoretical or technical expertise in a specialized field, such as scientists, engineers, or computer programmers. Congress created the H-1 B program more than fifty years ago and established an annual cap of 65,000 in 1990.

As part of the H-1B program, the Department of Homeland Security (DHS) requires U.S. employers to meet specific labor conditions to ensure that American workers are not adversely impacted, while the Department of Labor's Wage and Hour Division safeguards the treatment and compensation of H-1B workers.

AVAILABILITY OF NEW H-1B VISAS

After careful consideration of the H-1B Visa Reform Act of 2004 and assuming the regulations publish according to schedule, USCIS has determined that it is a reasonable interpretation of the Act of 2004 to reopen the filing period for FY 2005 on Thursday, May 12, 2005 and make available 20,000 new H-1B numbers limited solely to those aliens who have received a master's or higher degree from a U.S. institution of higher education.

Anticipating a large volume of petitions from U.S. employers seeking those new FY 2005 exemptions, USCIS strongly encourages U.S. employers to send their H-1B petitions via overnight delivery service in accordance with the procedures set forth below to ensure the earliest possible receipt at the Vermont Service Center on or after Thursday, May 12, 2005. So that employers will not have to file two petitions for the same beneficiary, USCIS will automatically treat petitions that do not receive an FY 2005 number as a request for FY 2006 processing unless the petitioner clearly annotates the first page of the Form I-129 with the phrase "FY 2005 only."

Beginning in FY 2006 and for future fiscal years, USCIS will exempt the first 20,000 H-1B petitions reflecting an alien beneficiary with a U.S.-earned master's or higher degree from the H-1B cap.

IF YOU ARE FILING FOR FY 2005

- Beginning Thursday, May 12, 2005 (assuming the regulations publish according to schedule), USCIS is directing U.S. employers seeking an FY 2005 H-1B number to file their H-1B petitions at the following address at the Vermont Service Center:

**USCIS Vermont Service Center
1A Lemnah Drive
St. Albans, VT 05479-7001**

- Assuming the regulations publish according to schedule, USCIS will reject any new H-1B petition seeking an FY 2005 number that is received **prior to Thursday, May 12, 2005**. Such petitions received **on or after Thursday, May 12, 2005** at any USCIS service center or address other than the special USCIS Vermont Service Center address noted above **will be rejected**.
- USCIS only will accept FY 2005 H-1B petitions that are submitted via U.S. mail, express shipping services, or other courier companies normally servicing the Vermont Service Center. Personal delivery or electronic filing (e-filing) will not be accepted.
- Premium processing requests may be submitted with Form I-907 and \$1,000 additional fee.
- U.S. employers who already have filed an FY 2006 H-1B petition can “upgrade” that petition and seek an available FY 2005 H-1B number. “Upgrade” filings must be made separately to the special Vermont Service Center address above in accordance with instructions in the new regulations, but they will not require new fees or full sets of new forms. Thus, those who have already filed FY 2006 petitions (including those that requested a work start date of October 1, 2005 or earlier if available) will be neither advantaged nor disadvantaged in seeking a FY 2005 number under the new exemption. An “upgrade” filing must include:
 - (1) a letter requesting the “upgrade;”
 - (2) either
 - a. a copy of the approval notice for the FY 2006 petition,
 - b. a copy of the receipt notice for the FY 2006 petition,
 - c. a copy of the first two pages of the related Form I-129 if a receipt notice has not yet been received, or
 - d. a new Form I-129;
 - (3) a certified Labor Condition Application (LCA) from the Department of Labor valid for the period of requested employment (or copy thereof if not already provided with the FY 2006 petition); and
 - (4) if premium processing was not already requested, the “upgrade” must include Form I-907 and the \$1,000 fee.

IF YOU ARE FILING FOR FY 2006

- As of April 1, 2005, U.S. employers seeking an FY 2006 H-1B number could file their H-1B petitions at the USCIS Service Center normally having jurisdiction over the intended place of employment.
- USCIS will exempt the first 20,000 petitions for H-1B workers who have a master’s degree or higher from a U.S. institution of higher learning. After those 20,000 slots are filled, USCIS will apply petitions for H-1B workers with a master’s degree or higher against the congressionally mandated cap of 65,000.

- To insure fairness, USCIS is only accepting petitions filed via U.S. mail, express shipping services, or other courier companies normally servicing the applicable service center and is temporarily suspending e-filing of H-1B petitions. Once the new 20,000 exemptions are filled for FY 2005, USCIS will announce reopening of the e-filing option.

CAP COUNTING METHODOLOGY FOR ALL FISCAL YEARS

- For FY 2006 and subsequent fiscal years, and for the FY 2005 exemption filings, USCIS will accept and adjudicate properly filed H-1B petitions on a first in, first out basis using projections that indicate the number of petitions necessary to reach the congressionally mandated cap. USCIS will closely monitor that number and notify the public of the “final receipt date” (the date USCIS receives the necessary number of petitions to meet the cap).
- For petitions received on the “final receipt date,” USCIS will apply a computer-generated random selection process. This process will randomly select the exact number of petitions from the day’s receipts needed to meet the congressionally mandated cap. USCIS will reject all petitions received on the “final receipt date” not selected through the random process. In the interest of fairness and orderly procedures, if any cap is reached on the first day on which filings can be made, the random selection will include the filings received on that first day AND the following day.

NEW FILING FEES AND FORMS FOR ALL FISCAL YEARS

- Petitioners are reminded that, regardless of the fiscal year numbers requested, the Form I-129 must be filed with:
 - 1) The base filing fee of \$185.00 **plus**
 - 2) The applicable American Competitiveness and Workforce Improvement Act of 1998 (AWCIA) fees:
 - a. \$1,500.00 for employers with 26 or more U.S. full time equivalent employees, including employees at any affiliate or subsidiary of such employer or
 - b. \$750.00 for employers with 25 or less U.S. full time equivalent employees, including employees at any affiliate or subsidiary of such employer
 - 3) And the new \$500.00 Fraud Prevention and Detection Fee as applicable. (Employers seeking a worker’s initial grant of H-1B or L nonimmigrant classification and employers seeking to hire an existing H-1B or L worker currently employed by another employer must pay the \$500 Fraud Prevention and Detection Fee. The \$500 fee does not need to be submitted by: 1) employers who seek to extend a current H-1B or L alien’s status where such an extension does not involve a change of employers; 2) employers who are seeking H-1B1, Chile-Singapore Free Trade Act nonimmigrants; or 3) dependents of H-1B or L principal beneficiaries.)
- A new Form I-129 has been created and is available at www.uscis.gov for immediate use. Until May 30, 2005, however, U.S. employers may file older editions of the Form I-129 and Form I-129W provided they clearly indicate the beneficiary’s education in accordance with the instructions set forth in the new regulations. Information regarding the use of old editions of the Form I-129 and Form I-129W is currently available at www.uscis.gov.

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