



## USCIS Reaches FY 2015 H-1B Cap

Yesterday, the USCIS announced that the FY 2015 H-1B cap is now closed because it has received a sufficient number of H-1B petitions to reach the 65,000 statutory cap as well as the 20,000 advanced degree exemption. USCIS will reject any cap-subject H-1B petitions received on or after April 8, 2014 seeking an employment start date in FY 2015 (October 1, 2014 or after). With this year's H-1B cap closed, employers will be unable to file new H-1B petitions until April 1, 2015 when the FY 2016 H-1B cap opens for petitions with a start date of October 1, 2015.

The USCIS will use a computer-generated random selection process (commonly known as the "lottery") for all FY 2015 cap-subject petitions received through April 7, 2014. USCIS has not released a date when the lottery will be completed due to the high number of petitions received. USCIS has confirmed it will conduct the selection process for 20,000 advanced degree exemption petitions first. All advanced degree petitions not selected during the initial lottery will then become part of the random selection process for the 65,000 statutory cap. USCIS will reject and return any cap-subject petition that is not randomly selected along with filing fees.

As indicated in prior alerts, rejection rates under this year's cap is expected to be very high. GT recommends that employers conduct a proactive assessment of alternative options for any employee who it has sponsored under this year's cap, especially since next year's cap will not open until April 1, 2015 for October 1, 2015 start dates. Such contingency plans include: (a) reviewing alternative work visa options; (b) determining whether a student candidate who holds F-1 Optional Practical Training (OPT) work authorization is eligible for a 17-month OPT extension because the candidate holds a U.S. Science, Technology, Engineering or Math (STEM) degree and the employer is enrolled in E-Verify; (c) having the employee work abroad at a related foreign entity of the U.S. company and returning to the country after a year on a L-1 visa; or (d) exploring whether the candidate can enroll in a U.S. academic program and secure U.S. work authorization.

GT will continue to monitor this situation and provide new information as it becomes available. For additional information about the H-1B cap or a particular H-1B case, please contact your GT Attorney.

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