



GMS Flash Alert

Immigration Edition

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United States – USCIS Completes H-1B Cap Lottery Processing

As of April 11, 2018, U.S. Citizenship and Immigration Service (“USCIS”) announced that it has completed the H-1B Cap lottery selection process from the 190,098 H-1B petitions it received for this year’s cap.¹ The random, computer-generated process first selected 20,000 petitions towards the U.S. advanced-degree exemption (commonly referred to as the “U.S. Master’s Cap”), and then selected an additional 65,000 congressionally-mandated “regular Cap” petitions from the remaining pool of petitions.

WHY THIS MATTERS

A cap-subject employer must timely file H-1B petitions for qualified applicants by the first week in April each year in order to have the possibility of employing a candidate in H-1B status commencing on October 1 of the same year.² As in prior years, the demand for H-1B employees far outweighs the 85,000 H-1B petitions selected each year. In the coming weeks, employers may expect to start receiving Receipt Notices from USCIS for selected H-1B petitions. Shortly thereafter, the petitions with attached filing fee checks will be returned for those petitions that were not selected in the cap lottery.

Receipt and Rejection Notices are especially important to those H-1B candidates who rely on what is commonly referred to as “Cap-gap relief,” wherein, for instance, an F-1 student whose EAD card will expire between April 1 and October 1 may continue in authorized work status while her selected H-1B petition is still processing, or if the petition has been approved, effective October 1.

Employers should work closely with their immigration counsel to make sure that eligible individuals have the necessary documentation to apply for Cap-gap relief, and to prepare those same individuals for ending their employment status should their H-1B petition be rejected.

More on the H-1B Cap and Petitions USCIS Continues to Process

Employers should note that this lottery process applies only to initial H-1B cap-subject petitions. USCIS will continue to accept and process petitions filed to:

- extend the amount of time a current H-1B worker may remain in the United States;
- amend the terms of employment for current H-1B workers;
- allow current H-1B workers to change employers;
- allow cap-exempt initial H-1B filings; and
- allow current H-1B workers to work concurrently in a second H-1B position.³

KPMG NOTE

KPMG Law LLP in Canada will continue to monitor the situation, and will endeavor to keep GMS *Flash Alert* readers informed as developments occur.

FOOTNOTES:

1 See "H-1B Fiscal Year (FY) 2019 Cap Season," USCIS (April 11, 2018) at: <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-fiscal-year-fy-2019-cap-season> .

2 For prior coverage, see GMS [Flash Alert 2017-146](#) (October 4, 2017).

3 See "H-1B Fiscal Year (FY) 2019 Cap Season," USCIS (April 11, 2018) at: <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-fiscal-year-fy-2019-cap-season> .

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Contact us

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