

USCIS Confirms No Procedural Changes for H-1B FY2019 Cap Season

Monday, April 2, 2018, is just around the corner and begins the FY2019 H-1B cap filing season. Employers are urged to begin now to prepare for filing H-1B petitions subject to the cap. As reported earlier this week, due to continued high demand, it is expected that the H-1B quota will be filled within the first five business days of April. The H-1B quotas for FY2019 will be capped at 85,000 (20,000 of which are reserved for beneficiaries with advanced degrees from a U.S. college or university).

U.S. Citizenship and Immigration Services (USCIS) confirmed on Thursday that it will follow the same filing procedures used for FY2018 cap season. There is anticipated to be a short suspension of premium processing for H-1B cap-subject petitions (although USCIS does not anticipate that premium processing will be suspended for non-cap H-1B petitions as it was last year). FY2018 was the first time that premium processing had been suspended with respect to the filing of H-1B petitions. USCIS gradually reinstated premium processing for both cap and non-cap cases last year, with the suspension ending within six months of its inception. FY2019 will see a suspension of premium processing for H-1B cap-subject petitions, but the suspension is expected to be short.

Previous talk about a pre-registration system to be put into place for this cap season will also not come to fruition. USCIS first proposed a pre-registration for H-1B cap filings in 2011. Under the pre-registration system, employers wanting to file an initial H-1B cap petition would electronically register with USCIS for consideration of available H-1B cap numbers, eliminating the need to prepare and file H-1B petitions without any certainty that an H-1B cap number would ultimately be allocated to the beneficiary named on the petition. USCIS evaluated the current random selection process and found that it is extremely difficult for USCIS to handle the volume of petitions received during the first five days of the H-1B cap filing season. In addition, the current petition process of preparing and mailing H-1B petitions, with the required filing fee, can be burdensome and costly for employers. Accordingly, USCIS proposed a pre-registration system that would allow U.S. employers to electronically register for consideration of available H-1B cap numbers without having to first prepare and submit the petition. Each H-1B cap season employers ask whether this pre-registration system will be implemented, but USCIS has not done so to date, and will not be implementing the pre-registration process this fiscal year.

Employers are reminded that not all H-1B filings are subject to the cap. H-1B petitions filed on behalf of beneficiaries who will work at institutions of higher education or related or affiliated nonprofit entities, or at nonprofit research organizations or governmental research organizations are all exempt from the cap. In addition, amended H-1B petitions, extensions, change of employer, and concurrent H-1B petitions are generally also cap exempt.

Should you have questions regarding individual situations or the applicability of the above, please feel free to contact the author.



Frances Rayer

Member

frayer@cozen.com
Phone: (215) 665-3704
Fax: (215) 665-2013

Related Practice Areas

- Immigration Policy & Strategy