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**Immigration Update – April 4, 2007**

**H1-B Cap Has Been Reached**

USCIS announced yesterday afternoon that it has received enough H-1B cap-subject petitions to meet the H-1B cap for the fiscal year starting October 1, 2007. Approximately 150,000 cap-subject H-1B petitions were received by Monday afternoon, April 2. Only 65,000 slots are available for most applicants. There is a separate cap of 20,000 additional slots for applicants who hold a Masters or higher degree from a US university.

As part of its announcement, USCIS indicated the following:

- USCIS will use a random selection lottery to determine which of the cap-subject H-1B cases it received on April 2 and 3 will be accepted.
- USCIS will reject and return, with filing fees, any cap-subject H-1B petitions received on or after April 4.
- USCIS will reject and return, with filing fees, any H-1B cap cases received on April 2 and 3 that are not randomly selected. This could take several weeks.
- USCIS is uncertain how many of the cases it received on April 2 and 3 were for applicants who hold Masters or higher degrees from US universities. USCIS will make a future announcement regarding the "final receipt date" for these petitions.

Theoretically, this means that H-1B petitions for holders of US Masters and higher degrees can be filed until a cut off date is announced. However, it is likely that the "final receipt date" for these cases will be April 3 or 4, so that it is probably already too late to file these cases.

The cap does not apply to H-1B petitions filed to: (1) extend the period of time an H-1B worker may remain in the U.S.; (2) change the terms of employment for an H-1B worker who is not changing employers; or (3) allow an H-1B worker to work concurrently for a second employer while continuing with the current employer. In most cases, the cap does not apply to new employees who are currently employed in H-1B status with another employer, or who have held H-1B status at any point during the past six years. In addition, the cap does not apply to institutions of higher education, nonprofit organizations that are related or affiliated to such institutions, and nonprofit or governmental research organizations.

You can view the US CIS announcement at  
<http://www.uscis.gov/files/pressrelease/H1BFY08Cap040307.pdf>

## Questions

If you have any questions about the information in this newsletter, please contact one of the Trow & Rahal attorneys listed below.

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