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Immigration

## H-1B Cap Reached for FY 2015 – Alternative Visa Options for Employers

**Legal Update**

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On April 7, 2014, USCIS announced the H-1B cap for fiscal year 2015 (October 1, 2014-September 30, 2015) had been reached as it received more applications than the number of available H-1B visas. The cap on the number of H-1B visas available each fiscal year is 65,000. It will now conduct a random selection process of the H-1B applications received to determine which applications will be “assigned” an H-1B cap number and adjudicated.

The H-1B visa is available to employers who want to hire a foreign national worker with at least a bachelor’s degree or equivalent in a relevant field for a position which requires a degree in that field (also known as a specialty occupation). The H-1B cap applies to new H-1B petitions filed for foreign workers who have not had an H-1B petition filed and approved within the past six years.

**What Does this Mean for Employers Between Now and October 1, 2015?**

Cap subject employers WILL NOT be able to file H-1B petitions until April 1, 2015, for H-1Bs under Fiscal Year 2016 (start date October 1, 2015) for the following candidates:

- Candidates who have never been in H-1B status within the last six years, OR
- Candidates currently in H-1B status with an H-1B cap exempt employer (institutions of higher education, nonprofit research organizations, or government research organizations and their affiliated entities)

Cap-exempt employers can continue to file H-1B petitions as they are not subject to the H-1B numerical limit.

**What Work Visa Sponsorship Options Are Available In Light of the H-1B Cap Being Reached?**

Employers can still sponsor work visas/work authorization for the following:

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- Candidates who are currently in H-1B status with another employer and/or who have been counted against the H-1B cap within the last six years
- Candidates who are nationals of Singapore and Chile through the H1B1 category
- Candidates who are nationals of Australia through the E-3 visa category
- Candidates who have worked for the company or any of its related entities outside of the U.S. for at least one year during the past three years through the L-1 visa category
- Candidates who are nationals of Canada or Mexico through the TN visa category
- Candidates who are individuals of extraordinary ability in the sciences, education, business, arts, or athletics or individuals of extraordinary achievement in motion picture or television industry through the O-1A /O-1B category
- Candidates currently employed with a cap-exempt entity and will work concurrently with a cap subject employer
- Candidates entering the US to participate in J-1 or H-3 training programs
- Candidates who are temporary H-2A agricultural or H-2B nonagricultural workers
- Candidates who are authorized to work under F-1 Optional Practical Training (OPT) or Curriculum Practical Training (CPT). Note that STEM graduates in their first year of OPT can extend their work authorization for an additional 17 months if they are employed by an E-Verify employer

There may be other visa options available depending on the position and candidate. If none of the above scenarios apply, please consult with Fredrikson & Byron's Immigration Group to explore other visa options.

## **What Can You Do Now to Prepare for H-1B Filings Under FY 2016**

- Set recruitment goals in order to allow filing for H-1B petitions on April 1, 2015
- Consult with legal counsel regarding visa sponsorship strategies for current employees working under Optional Practical Training or Curriculum Practical Training who will need H-1B sponsorship