

Business Immigration Reporter

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USCIS Reaches H-1b Cap and Announces H-1b Cap Random Selection Process

The USCIS announced on April 7, 2015, that it had reached the congressionally mandated cap for H-1b visas for fiscal year 2016.

During the filing period, which began on April 1, the agency received almost 233,000 H-1b petitions which will be competing for selection of the congressionally mandated 65,000 visas of persons with bachelor's degrees and 20,000 visas for persons with advanced degrees.

The USCIS will randomly select enough petitions to meet the caps. USCIS will first select the advanced degree exemption petitions. Unselected advanced degree petitions will automatically become part of the 65,000 random selection process.

At the time of this writing, the USCIS had completed its initial data intake process for all filings received between April 1 and April 7. Although USCIS previously announced it will begin premium processing for cases no later than May 11, the Agency sent an alert confirming it will begin premium processing cases on April 27, 2015. If you filed an H-1b premium processing case and you have been selected for processing, do not confuse the receiving of a premium processing receipt with the beginning of premium processing. You could receive a receipt today, April 15, but the USCIS will not begin the 15 day processing of your premium processing case until April 27.

These timelines apply to newly filed H-1b petitions for fiscal year 2016 only, all other H-1b petitions, such as extensions, cap-exempt H-1b's, and other visa categories continue to be processed as usual.

Employment Authorization for Certain H-4 Dependents

Some time ago in February this year USCIS Director Leon Rodriguez announced that the Department of Homeland Security (DHS) will extend employment eligibility to certain H-4 dependant spouses.



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Consultations/Inquiries

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By way of reminder, the USCIS will accept employment authorization applications starting May 26, 2015 for the following H-4 dependant spouse:

- H-4's where the principal applicant is the beneficiary of an approved I-140 Immigrant Petition for Alien Worker; or
- H-4's where the principal applicant has been granted H-1b status under section 106(a) and (b) of the American Competitiveness Act of 2000 (AC21) whereas the H-1b nonimmigrant seeks lawful permanent residence to work and remain in the United States beyond the six-year limit on their H-1b status.

USCIS estimates nearly 180,000 H-4 dependants may be eligible to apply for employment authorization.

May 2015 Visa Bulletin – The Good – The Bad – The Ugly

The good news is that the employment third preference category (Eb-3) for all chargeability areas has advanced to 01 January 2015. The category was last current in 2005, subsequently stayed backlogged for several years and now it could become current once again. This is very good news for employers who wish to petition for skilled workers who have a bachelors degree and/or some years work experience and also for employers who seek to hire unskilled labor on a permanent basis.

The bad news is that the second preference categories (Eb-2) from China and India and the third preference category from China are not advancing quickly enough and that the third preference category from India retrogressed.

The ugly is that the employment fifth preference category (Eb-5) for China has retrogressed from being current to 01 May 2013. China sends approximately 85% of all Eb-5 investors. Since its inception, the category has never been oversubscribed and fallen behind. This may cause unforeseen economic, planning, and management issues for Regional Centers in which many Chinese investors buy limited partnership interests for purposes of procuring permanent residence in the United States. The regulatory framework requires such investors to create at least 10 direct or indirect U.S. jobs within a certain period of time by way of their investments, but the visa bulletin retrogression and subsequent unavailability of immigrant visa numbers for Chinese Eb-5 investors may seriously impede well established economic models and employment creation methodologies.

myE-Verify© Accessible Nationwide

E-Verify is an Internet-based system that compares information from an employee's Form I-9 to data from the Department of Homeland Security and Social Security Administration records to confirm employment eligibility.

USCIS developed myE-Verify, which gives job seekers and U.S. workers resources and tools to learn about and participate in E-Verify. The system has features such as "Self Lock," which allows a worker to lock his/her

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social security number in E-verify to prevent it from being misused within the system by someone else.

An additional feature is "Self Check" whereby a person may check their own work eligibility within the United States.

The myE-Verify tool is now available nationwide and can be found at:

[MyE-Verify](#)

I-9 Fines: Should You Litigate?

Immigration & Customs Enforcement (ICE) and the Office of the Chief Administrative Hearing Officer (OCAHO) continue to disagree on the severity of penalties for small employers committing I-9 violations.

On April 3, 2015, OCAHO decided *United States v. Horno MSJ, LTD., Company*, OCAHO No. 14A00045.

Horno is a bakery jointly owned by Beatriz Talayero (68) and her husband Antonio Talayero (70). The company has 35 employees and when ICE audited the bakery's I-9's it found a number of violations. When ICE issued Notice of Intent to Fine (NIF), proposing to fine the bakery \$30,574.50, the Talayeros went to court to argue their case. Judge Thomas rendered a 19-page decision addressing all I-9 violations in great detail and balancing the Talayeros' I-9 violations with their good faith demonstrated in maintaining the company's I-9's. Horno's was found liable for 32 I-9 violations and their fine was reduced to \$14,600.

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