



Questions and Answers

March 20, 2009

USCIS to Accept H-1B Petitions for FY 2010 Beginning April 1, 2009 *Information for Completing and Submitting an FY 2010 H-1B Cap Case*

Introduction

U.S. Citizenship and Immigration Services (USCIS) today announced that it will begin accepting H-1B petitions on April 1, 2009 subject to the fiscal year 2010 (FY 2010) cap. The following are frequently asked questions and answers meant to assist the public in understanding the general H-1B filing process.

Background

U.S. businesses use the [H-1B](#) program to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, such as scientists, engineers, or computer programmers.

A specialty occupation requires theoretical and practical application of a body of specialized knowledge along with at least a bachelor's degree or its equivalent (e.g., architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts.)

Questions and Answers

Q: How does USCIS determine that an H-1B petition is subject to the FY 2010 Cap?

A: USCIS uses the information provided in Part C of the H-1B Data Collection and Filing Fee Exemption Supplement (Form I-129, pages 14 through 15) to determine whether a petition is subject to the 65,000 and 20,000 (U.S. master's degree or higher) H-1B numerical limitations (the "cap").

Q: When can I file an FY 2010 H-1B Cap subject petition?

A: H-1B petitions can be filed no more than six months in advance of the requested start date. Therefore, petitions seeking an FY 2010 H-1B Cap number with an Oct. 1, 2009 start date can be filed no sooner than April 1, 2009. This is when the majority of H-1B cap subject petitions are filed in order to obtain a new visa number for FY 2010. Conversely, petitions that are cap exempt may be filed at any time during the year, dependent on the petitioner's need. Note: If you request a start date for a FY 2010 cap subject H-1B petition that is prior to Oct. 1, 2009 or submit a cap subject petition prior to April 1, 2009 your petition will be rejected.

Q: Where should I mail my H-1B Cap subject petition?

A: Petitions must be filed at the correct Service Center depending on jurisdiction. Specific mailing addresses have been established for purposes of identification and processing of H-1B cap subject cases. The specific filing addresses are listed on the accompanying filing charts. These [filing charts](#) are also available on the USCIS website. A separate mailing address has been established for certain types of educational or nonprofit organizations which file H-1B petitions on behalf of beneficiaries that are not counted against the H-1B numerical limitations. Please read the filing instructions very carefully as filing at the incorrect location will result in rejection of the petition. Rejected petitions will not retain a filing date.

Q: What is Premium Processing Service?

A: For certain employment-based immigration benefits, petitioners may choose to file a Form I-907 with the accompanying filing fee of \$1,000 to have their petition adjudicated within 15 calendar days (this fee is in addition to the required base filing and other applicable fees). H-1B petitions are eligible for the Premium Processing program. The Form I-907 and corresponding fee can be filed at the same time as or subsequent to the filing of Form I-129. If filed subsequent to the Form I-129, please be sure to include the receipt number (i.e. EAC 09 123 51234) of the Form I-129 in the pertinent section of Form I-907. Only Form I-907 editions 07/30/07, 04/02/07 and 08/28/06 will be accepted. For more information concerning the Premium Processing program please visit our website at www.uscis.gov.

Q: How do I ensure that my H-1B Cap subject petition is considered properly filed and accepted?

A: Complete all sections of the Form I-129 petition, the H Classification Supplement to Form I-129 (pages 8 and 9 of Form I-129), and the H-1B Data Collection and Filing Fee Exemption Supplement (pages 13 through 15). Original signatures, preferably in blue ink, are required on each form. Include the correct fee amount. Ensure that all required documentation and evidence is submitted with the petition at the time of filing. It is incumbent upon the petitioner to ensure that Form I-129 is completed accurately. Failure to complete Form I-129 with the correct information and provide the required fees or documentation may result in the rejection or denial of the H-1B petition.

Be sure to file the petition with the correct USCIS Service Center. H-1B petitions filed at the wrong location will be rejected. Such petitioners may lose the opportunity to have the petition considered for an available FY 2010 H-1B cap number.

Q: Does USCIS need a copy of the Labor Condition Application filed with the Department of Labor?

A: A certified Labor Condition Application (Form ETA 9035) from the Department of Labor must be submitted at the time of filing. A copy of the Labor Condition Application is acceptable. If the Labor Condition Application from the Department of Labor is for multiple positions, provide the name and USCIS case receipt number of any alien who has previously utilized it. Petitioners should ensure that they have signed the ETA 9035.

Q: Does USCIS require that an educational degree be submitted with the petition at the time of filing?

A: Evidence of the beneficiary's educational degree must be submitted at the time of filing. If all of the requirements for the degree have been met, but the degree has not yet been awarded, the following alternate evidence may be submitted: (a) a copy of the beneficiary's final transcript; or (b) a letter from the Registrar confirming that all of the degree requirements have been met. If the educational institution does not have a Registrar, such letter must be signed by the person in charge of the educational records where the degree will be awarded.

Q: Should a petitioner submit a duplicate copy of the H-1B petition?

A: A duplicate copy of the petition must be submitted at the time of filing if the beneficiary will be seeking nonimmigrant visa issuance abroad. USCIS will not make second copy if one is not provided. You may review the Department of State website at <http://travel.state.gov/> to make sure that the consulate indicated on Form I-129 is able to process the beneficiary's nonimmigrant visa application and for any other consulate-specific special instructions.

Q: What fees must be submitted with a petition?

A: The fees that must be submitted with a cap subject H-1B petition will depend on the type of petition. Please refer to **Fee Exemption and/or Determination** (page 14 of Form I-129) for detailed instructions on fees. The following fees may be required with a cap subject petition:

Base filing fee:

- **\$320**

American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) fee:

- **\$750** for employers with 1 to 25 full time equivalent employees unless exempt
- **\$1,500** for employers with 26 or more full time equivalent employees unless exempt (see H-1B Data Collection and Filing Fee Exemption Supplement, Part B)

Fraud fee:

- **\$500** to be submitted with the initial H-1B petition filed on behalf of each beneficiary by a petitioner. (Not for Chile/Singapore H-1B1 cases)

Premium processing fee:

- **\$1,000** for employers seeking Premium Processing Service

Checks should be payable to the Department of Homeland Security or U. S. Citizenship and Immigration Services, dated within the last six months, and include the proper guarantee amount, and signature.

Q: What if a check or other financial instrument used to pay a filing fee is subsequently returned as non-payable?

A: USCIS regulations at 8 CFR 103.2(a)(7)(i) provide that an application or petition submitted with the wrong filing fee shall be rejected as improperly filed and that rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date. While petitioners are generally provided the opportunity to correct a fee deficiency, pursuant to the regulations, the filing date is not established until and unless the fee deficiency has been corrected. H-1B cap subject petitions with non-payable fees will be given a new filing date the day the fee deficiency is corrected, as long as the cap has not been met. If the new filing date is after the cap has been met, the petition will be rejected.

Q: How should I organize my H-1B package?

A: Clearly label all H-1B cap cases in red ink on the top margin of Form I-129. Use the following codes:

- **Regular Cap** (65,000 regular cap cases, not including Chile/Singapore cap cases)
- **C/S Cap** (Chile/Singapore H-1B1s)
- **U.S. Masters** (20,000 cap for beneficiaries with U.S. Masters or higher degrees)

A separate check for each applicable filing fee (Form I-129, Premium Processing, Fraud Fee, and/or ACWIA fee) is preferred. Applicable fees should be stapled to the bottom right corner of the top document.

Here is the preferred order of documents at time of submission.

- Form I-907 (if filing for Premium Processing Service);
- Form G-28 (if represented by attorney or accredited representative);
- Form I-129 (“Petition for a Nonimmigrant Worker”);
- H Classification Supplement to Form I-129;
- H-1B Data Collection and Filing Fee Exemption Supplement;
- Provide a Table of Contents for supporting documentation:
 - Tab items as listed in Table of Contents;
 - Arrival-Departure Record (Form I-94) (if the beneficiary is in the US);

- If applicable, the SEVIS Form I-20 (if current or former F-1 student or F-2 dependent), SEVIS Form DS-2019 (if current or former J-1 or J-2) or Form I-566 (if current A or G nonimmigrant)
- Certified Labor Condition Application, Form ETA 9035, from Department of Labor;
- Employer/Attorney/Representative letter(s); and
- Other supporting documentation.
- Duplicate copy of the petition if the beneficiary will be seeking nonimmigrant visa issuance abroad. Clearly identify the duplicate copy of the petition as a COPY, so that is not mistaken for a duplicate filing.

Q: Can multiple petitions be mailed together?

A: Yes. If multiple petitions will be included in the same courier service or Post Office package, please place individual petitions into separate envelopes within the package. Individual petition envelopes should be marked with the following labels to reference the type of petition:

- Masters Premium
- Masters
- Regular Premium
- Regular
- Chile/Singapore

FILING DOCUMENTATION

Notice of Entry of Appearance as Attorney or Representative (Form G-28)

If the petitioner will be represented by an attorney or other accredited representative, a properly executed Form G-28 should be submitted. Each Form G-28 should include the following:

- All sections completed;
- The printed name and signature of the representative. The representative's signature can be either an original or a facsimile; and
- The original signature of the petitioner.

Form I-129 Petition for a Nonimmigrant Worker

- Complete all sections of the form accurately.
- Ensure the beneficiary's name is spelled properly and that his/her date of birth is displayed in the proper format (mm/dd/yyyy). Also, country of birth/citizenship and the I-94 # (if applicable) should be reviewed for accuracy.
- If the beneficiary will ultimately be seeking issuance of a visa at a consular office abroad, a copy of the petition and supporting documentation should be included with the filing. For cases where the beneficiary will be seeking a change of status in the United States, a copy is not necessary.
- If the beneficiary is seeking an extension or change of status, the petition should include evidence (e.g. Form I-94 or Form I-797 approval notice) to establish that the beneficiary will have maintained a valid nonimmigrant status through the employment start date being requested.
- A copy of the beneficiary's valid passport.

H Classification Supplement to Form I-129 (pages 8 and 9 of Form I-129)

- Please be sure to complete all sections of the form accurately.
In listing previous periods of stay in H/L classification (question 3), please also include the actual nonimmigrant classification (e.g. H-1B or L-1) held.
- Petitioner must sign the form, preferably in blue ink.

H-1B Data Collection and Filing Fee Supplement form (pages 13 through 15 of Form I-129)

- Please be sure to complete all sections of the form accurately.
- If the beneficiary has earned a Masters Degree or higher from a U.S. educational institution, be sure to answer accordingly in Part A, question 5 and Part C, question 7.
- If the petition does not involve a change of employer, Part C question 6 is not relevant. Thus, please answer “No” or provide an “N/A” in the margin of the form to the left of the question.
- Petitioner must sign the form, preferably in blue ink.

Form I-907 Request for Premium Processing

- Please be sure to complete all sections of the form accurately with original signatures.
- If there is a valid Form G-28 with the file and the attorney is signing the Form I-907, then the representative should sign in both Parts 3 and 4 of the Form I-907. Otherwise, the petitioner’s signature is required. Preferably, the signature(s) should be in blue ink.
- When form I-907 is filed after the filing of Form I-129 please include a copy of the Form I-129 receipt notice along with the Form I-907.

Please visit www.uscis.gov frequently for filing updates or call the National Customer Service Center at (800) 375-5283 for up-to-date information.

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