

**U.S. Department of Homeland Security**



**Homeland  
Security**

**Report on H-1B Petitions  
Annual Report  
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105-277, Division C,  
American Competitiveness and Workforce  
Improvement Act of 1998

## **Report on H-1B Petitions**

The Immigration Act of 1990 established numerical limitations on the H-1B nonimmigrant classification to provide U.S. employers facilitated access to foreign skilled workers while ensuring worker protections. The cap of [then] 65,000 was reached for the first time in fiscal year 1997 and again in fiscal year 1998 as demand increased significantly in the burgeoning technology sector.

In October 1998, the American Competitiveness and Workforce Improvement Act (ACWIA) was enacted (Public Law 105-277, Division C). The ACWIA temporarily increased the H-1B cap to 115,000 for fiscal years 1999 and 2000 and to 107,500 for fiscal year 2001 while establishing an affirmative role for U.S. employers to assist with education and training efforts. Under ACWIA, an H-1B Nonimmigrant Petitioner Fee account was established to fund training and education programs administered by the Department of Labor and the National Science Foundation. Employers, unless explicitly exempt under the law, were required to pay a \$500 fee for each H-1B worker sponsored. Employers who qualified as an institution or organization described in section 212(p) of the Immigration and Nationality Act (INA) were exempt from payment of this fee. Additionally, the ACWIA imposed quarterly and annual reporting requirements on the U.S. Citizenship and Immigration Service (USCIS) concerning the H-1B fee, fee exemption, and demographic H-1B worker data.

The 106<sup>th</sup> Congress passed two H-1B bills that impacted the H-1B program; enacted as the untitled Public Law 106-311 and Public Law 106-313, the American Competitiveness in the Twenty-First Century Act (AC-21). First, Congress raised the H-1B petitioner fee from \$500 to \$1,000 and exempted additional employers from payment of this fee. The AC-21 temporarily raises the H-1B cap to 195,000 for fiscal years 2001 through 2003 while exempting certain H-1B workers from these numerical limits.

Section 416(c)(1) of ACWIA mandates a report “...of the numbers of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act during the preceding 3-month period.” Furthermore, as described in section 416(c)(3), this report “...shall include the number of aliens who were issued visas or otherwise provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the Immigration and Nationality Act (as added by section 415 of this title).”

This report covers the four quarters of fiscal year 2003.

This report is presented in two parts: Part I provides information on the number of aliens granted H-1B status while Part II provides information on the number of employers exempt from the nonimmigrant H-1B petition fee. In both parts of this report, quarterly and annual data for fiscal year 2003 are presented.

Pursuant to section 214(c) of the INA, U.S. employers using the H-1B program are required to file a petition with the Department of Homeland Security (DHS) on behalf of an alien worker (the beneficiary). The petition must be approved before a visa is granted or an alien is provided nonimmigrant status. Accordingly, the petition data is the basis of this report.

**Part I. The number of aliens provided status under section 101(a)(15)(H)(i)(b) of the INA.**

Table 1 provides information on the number of H-1B petitions filed by employers in fiscal year 2003. This table also provides information on the number of H-1B petitions approved by the USCIS during this period. Petitions filed in a particular quarter may not be adjudicated in that same quarter.

U.S. employers file the petition with the USCIS to sponsor an alien worker as an H-1B nonimmigrant. This petition may be filed to sponsor an alien for an initial period of H-1B employment or to extend the authorized stay of an alien as an H-1B nonimmigrant. Several employers may file a petition for the same alien. Additionally, an employer may file the petition to sponsor an alien who currently has status as an H-1B nonimmigrant working for another employer or to seek an amendment of a previously approved petition. In the case of a petition to amend a previously approved petition, there may be no corresponding request to extend the authorized stay of the beneficiary. For example, an employer may file an amended petition notifying the USCIS of a different location where the beneficiary will be employed or a material change in the beneficiary's job duties. Therefore, the total number of approved petitions may exceed the actual number of aliens who are provided nonimmigrant status as H-1B.

Of the 231,030 petitions filed in fiscal year 2003 and 217,340 approved in fiscal year 2003, approximately 170,800 petitions were both filed **and** approved during fiscal year 2003. The remaining 46,500 petitions approved were filed in prior fiscal years.

**Table 1. Number of H-1B Petitions Filed and/or Approved by Quarter: FY 2000-FY 2003**

	Fiscal Year	Oct to Dec	Jan to Mar	Apr to Jun	Jul to Sep	Total
<b>Petitions filed</b>	<b>2000</b>	73,875	90,762	55,692	78,717	299,046
	<b>2001</b>	128,758	75,395	65,942	71,940	342,035
	<b>2002</b>	53,888	51,905	53,429	55,968	215,190
	<b>2003</b>	50,633	52,722	61,302	66,373	231,030
<b>Petitions approved*</b>	<b>2000</b>	42,453	69,523	80,128	65,536	257,640
	<b>2001</b>	57,953	114,070	82,677	76,506	331,206
	<b>2002</b>	62,212	51,363	34,003	49,959	197,537
	<b>2003</b>	47,867	50,648	57,514	61,311	217,340

\* Regardless of when filed.

**Part II. The number of aliens provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p) (1) of the INA.**

The ACWIA added section 214(c)(9)(A) of the INA to require that DHS impose a fee on an employer filing a petition initially to grant an alien status as H-1B; to extend the nonimmigrant stay of an alien as an H-1B (unless the employer previously has obtained an extension for such alien); or to obtain authorization for an alien having such status to change employers. The fee, effective December 1, 1998, and, as amended, authorized until September 30, 2003, was increased from \$500 to \$1,000 with passage of Public Law 106-311. The increased fee was effective on December 18, 2000.

Public Law 106-311 amended section 214(c)(9)(A) of the INA to specify which employers are exempt from the fee, including those employers described under section 212(p)(1) of the Act. Due to that legislative amendment, this report exceeds the reporting mandate: it covers all employers exempt from the fee, not only those described in 212(p). Additionally, the USCIS does not require the fee for certain administrative reasons. To summarize, these exemptions apply to employers that are:

- institutions of higher education defined in section 101(a) of the Higher Education Act of 1965;
- non-profit organizations or entities related to or affiliated with an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965;
- non-profit and Government research organizations;
- filing a second or subsequent request for an extension of stay for a particular alien;
- filing an amended petition without a request to extend the nonimmigrant stay of the alien beneficiary;
- filing a petition to correct a USCIS error;
- primary or secondary education institutions; or
- non-profit entities engaging in established curriculum-related clinical training of students registered at any such institution.

Table 2 shows the number of petitions that were filed in fiscal year 2003 and the number exempted from the fee. Table 3 shows the same information for all petitions approved in fiscal year 2003 regardless of when filed. Approximately 170,800 petitions are included in both tables indicating the petitions were both filed and approved during fiscal year 2003. As explained in Part I, the total number of approved petitions may exceed the actual number of aliens who are provided nonimmigrant status as H-1B since a single alien may be the beneficiary of multiple petitions.

**Table 2. Number of H-1B Petitions Filed  
by Quarter and Reason of Exemption from Fee: FY 2003**

For Fiscal Year 2003:	Oct 2002 to Dec 2002	Jan 2003 to Mar 2003	Apr 2003 to Jun 2003	Jul 2003 to Sep 2003	FY 2003
<b>TOTAL PETITIONS FILED</b>	50,633	52,722	61,302	66,373	231,030
Without any fee exemptions	39,881	40,495	44,316	50,012	174,704
With at least one exemption	10,746	12,219	16,973	16,336	56,274
Exemption data unavailable	6	8	13	25	52
<b>REASON FOR EXEMPTION</b>					
Employer is an institution of higher education	5,088	5,213	7,731	7,360	25,392
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,179	2,460	3,922	3,041	11,602
Employer is a nonprofit research organization or a government research organization	1,480	1,633	1,987	1,917	7,017
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	2,647	3,501	3,909	4,460	14,517
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,091	1,089	1,014	1,039	4,233
Employer is filing a petition in order to correct a USCIS error	49	62	50	62	223
Employer is a primary or secondary education institution	898	1,155	2,394	2,340	6,787
Employer is a non-profit entity engaged in clinical training	1,525	1,748	3,059	2,430	8,762

**Table 3. Number of H-1B Petitions Approved  
by Quarter and Reason of Exemption from Fee: FY 2003**

For Fiscal Year 2003:	Oct 2002 to Dec 2002	Jan 2003 to Mar 2003	Apr 2003 to Jun 2003	Jul 2003 to Sep 2003	FY 2003
<b>TOTAL PETITIONS APPROVED</b>	47,867	50,648	57,514	61,311	217,340
Without any fee exemptions	37,110	39,928	42,359	45,154	164,551
With at least one exemption	10,756	10,717	15,153	16,124	52,750
Exemption data unavailable	1	3	2	33	39
<b>REASON FOR EXEMPTION</b>					
Employer is an institution of higher Education	5,339	4,905	7,079	7,551	24,874
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,345	2,194	3,601	3,147	11,287
Employer is a nonprofit research organization or a government research organization	1,673	1,518	1,933	1,881	7,005
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	2,269	2,645	3,422	3,682	12,018
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,100	1,089	1,066	1,070	4,325
Employer is filing a petition in order to correct a USCIS error	33	62	39	53	187
Employer is a primary or secondary education institution	904	973	1,687	2,480	6,044
Employer is a non-profit entity engaged in clinical training	1,584	1,552	2,706	2,510	8,352