



Fact Sheet

April 9, 2007

USCIS IMPOSES CONDITIONS ON AVAILABILITY OF PREMIUM PROCESSING FOR H-1B PETITIONS SUBJECT TO THE FY 2008 CAP

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) announced today that the 15-day premium processing period for petitions subject to the fiscal year 2008 (FY 2008) congressionally mandated H-1B cap will begin after the computer-generated random lottery has selected the petitions for processing. USCIS announced on April 3, 2007 that it had received enough H-1B petitions to meet the FY 2008 cap.

USCIS has determined that the large number of H-1B filings on April 2 and April 3 requires placing conditions on the availability of the premium processing service. The Agency's ability to provide premium processing service to these petitions is affected by the fact that the cap was reached and exceeded the first day employers could file H-1B petitions.

8 CFR 103.2(f)(2) provides that USCIS may announce via its website any applicable conditions on the availability of the premium processing service for previously designated classifications, petitions or applications. By an interim rule published on May 23, 2006 at 71 FR 29571, USCIS announced that it would post any conditions imposed on the availability of premium processing necessary to ensure that the agency has the needed flexibility to handle situations affecting the ability to provide premium processing service. Like the scenario in the preamble that required imposing conditions on the availability of premium processing, USCIS must exercise its authority under 8 CFR 103.2(f)(2) as a result of current conditions.

On April 2 and 3, USCIS received 133,000 unique pieces of mail containing H-1B petitions. Each piece of mail may contain more than one H-1B petition. It will require substantial resources to open and sort through that volume of mail.

USCIS is prohibited by 8 CFR 214.2(h)(8) from adjudicating any cases that are subject to the FY 2008 cap until it conducts a computer-generated random lottery for cases received on April 2 and April 3. USCIS will reject with their fees all petitions not selected in the random selection process. As directed by the *H-1B Visa Reform Act of 2004*, the first 20,000 H-1B petitions filed on behalf of aliens with U.S.-earned masters' or higher degrees are exempt from any fiscal year cap on available H-1B visas. In the event that USCIS received more than 20,000 petitions that would qualify for this exemption on April 2 and April 3, USCIS must first conduct a computer-generated random lottery to select 20,000 filings for processing. Those filings not selected for processing are subject to the FY 2008 H-1B cap and must be considered in that random selection process as well. Because of that, USCIS must first determine whether the 20,000 cap exemption was met and/or exceeded prior to conducting the computer-generated random lottery and prior to processing any cases subject to the FY 2008 H-1B cap.

USCIS is not suspending or terminating the premium processing service for the H-1B classification. It has simply imposed a condition of availability of the premium processing service for cap-subject H-1B petitions. That condition is that the 15-day premium processing period will begin when the petition is selected for processing through the random selection process.