



FROM THE EDITOR'S DESK

With the U.S. Citizenship and Immigration Services (USCIS) announcing that it conducted two random selections (for approximately 163,000 petitions), VisaPro has started receiving receipt notices for the H-1B cases. The selection process started off with petitions qualifying for the 20,000 "master's or higher degree" (advanced degree) exemption, and then on the remaining advance degree petitions together with the general H-1B pool of petitions, for the 65,000 cap. If approved these H-1B petitions will be eligible to receive an [H-1B](#) visa number.

Earlier this month, as expected, the USCIS announced that it has reached the congressionally mandated H-1B cap for the 2009 fiscal year, which for the US government begins October 1. This is the fifth consecutive year that the H-1B cap has been reached before the beginning of fiscal year. "Time is the remedy for everything" goes the old adage, but, time also flies swiftly without any relief for the many US employers who are seeking to hire foreign labor, using H-1B visa, to offset the severe shortage of workers. Even as the soothing effect of spring is showing up this month, there seems to be no respite in the offing for the H-1B cap woes of the US employers.

The U.S. Congress just doesn't appear willing to cave in to the growing labor needs, and the IT industry is not giving up yet. Proponents of the 'H-1B cap increase theory' have vowed to continue their effective dissemination of information and push hard to increase the number of visas available. We will keep you abreast of all the developments on this front in future issues of **Immigration Monitor**.

On April 10 USCIS released the preliminary numbers for the H-1B filings. They received nearly 163,000 H-1B petitions during the initial filing period, ending this year on April 7, 2008. It is notable that more than 31,200 of those petitions were for the advanced degree category. Let us

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break down the statistics in view of the numbers announced. The situation does not seem to be as bad as the immigration community initially thought it would be, with many people projecting that the number of petitions filed would be considerably greater. In a worst case scenario, let us assume that all 163,000 petitions were filed in the approved manner: 20000 of the petitions will be considered under the advanced degree exemption, leaving us with 143,000 petitions vying for the 58,200 slots available through the random selection process (Effective January 1, 2004, the H-1B1 program became available, allowing employers to request foreign workers in the U.S. in a specialty occupation from Chile and Singapore. Current laws limit the number of foreign workers who may be issued an [H-1B1](#) visa to 6,800).

Our attorneys were very busy with H-1B filings during the first week of the month. Though most of our clients had planned for their filings early and were ready with the cases in advance, we feel that many of our readers are still puzzled about the selection process. We would like our readers to know that the increase in H-1B applications has compelled the USCIS to once again implement the random selection or "lottery" process for petitions. The USCIS will include petitions in the random selection process that are filed during the first five business days available for filing H-1B petitions for a given fiscal year, again, ending this year on April 7, rather than just the first two days as was the case last year. As soon as the cap is reached, the filing window is closed for another year, thus preventing many companies from hiring critically needed workers.

Before running the random selection process, USCIS will complete initial data entry for all filings received during the filing period. Due to the high number of petitions, USCIS is not yet able to announce the precise day on which it will conduct the random selection process.

USCIS will handle duplicate filings in accordance with the interim final rule published on March 24, 2008 in the Federal Register. USCIS will reject, and return filing fees for all cap-subject petitions not randomly selected and not found to be a duplicate.

Other Developments in Immigration Law

OPT Extension for Highly Skilled Foreign Students

The U.S. Department of Homeland Security (DHS) released an interim final rule that extends the period of Optional Practical Training (OPT) from 12 to 29 months for qualified [F-1](#) non-immigrant students. The extension will be available to F-1 students with a degree in science, technology, engineering, or mathematics who are employed by businesses enrolled in the E-Verify program.

YOUR OPINION

Will the Optional Practical Training (OPT) Extension for foreign students act as an interim relief for US companies seeking to attract and retain highly skilled foreign workers?

- a. Yes
- b. No
- c. Can't say

[Cast Your Vote](#)

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IMMIGRATION QUIZ

Win a FREE Online Consultation!

Submit your answer to the query below. The best response will be published in the next **Immigration Monitor** and the winner will receive a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of May 2008.

I had an H-1B visa with Company A which is still valid and not cancelled. Now I have moved to Company B and have started working for them. They have filed for my H-1B transfer which is still pending. Now I am planning to move to Company C. Will I be able to transfer my visa to company C without any risk involved?

[Submit Your Answer](#)

This new rule will greatly benefit many students, but VisaPro has observed some potential problems. The interim final regulation provides a "bridge" for F-1 students who are picked in the H-1B lottery, but requires the petitioner to have marked the petition for a "change of status." Of course, many petitioners did not mark petitions "change of status" because of the very "cap gap" the interim final rule is intended to close. Though the regulation was published by ICE, the American Immigration Lawyers Association (AILA) has contacted USCIS for guidance going forward, and USCIS is looking for a solution.

Filing Instructions for Petition for Alien Relative Revised

The USCIS has revised the filing instructions for the Petition for Alien Relative (Form [I-130](#)). Effective immediately, all petitioners filing stand-alone Form I-130s must file their petitions with the Chicago Lockbox instead of a USCIS Service Center. A USCIS Update was issued on Nov. 30, 2007, encouraging petitioners to file with the Chicago Lockbox while the form was being revised.

Naturalization Case Processing Time Updated by USCIS

The USCIS announced on April 2, 2008, that it will finish more than one million [naturalization](#) cases during fiscal year 2008 – far exceeding the number of cases completed during the last fiscal year. They also updated the expected time it will take to complete naturalization cases, projecting processing times averaging 13-15 months. That's a three month improvement from the 16-18 month projection that USCIS made just six months ago.

Supplemental Proposed Rule with Employer Guidance Regarding No-Match Letters

The DHS released a Supplemental Proposed Rulemaking for the No-Match Rule issued on August 15, 2007. This rulemaking addresses three issues cited in a decision of the U.S. District Court for the Northern District of California enjoining the August 2007 No-Match Rule. This Supplemental Proposed Rulemaking provides a more detailed analysis of how DHS developed the No-Match policy and will help responsible employers ensure that they are not employing unauthorized workers.

Immigration Articles and Other Fun Stuff

Now for the regulars -- this month's **Immigration Article** will focus on how [L-1A](#) visa provides an easier path for those interested in filing for permanent residence under the [EB-1C](#) category. Check out our **In Focus** section which will talk in detail about the effects of the interim final rule extending the period of Optional Practical Training (OPT) from 12 to 29 months for qualified F-1 non-immigrant

Immigration
Question?

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Winner of the Immigration Quiz - March 2008:

Jeanne Howitz

The Question:

I am a Director of a manufacturing company with offices only in India and I am going to open a new office in the U.S. this year on an [L-1A](#) visa, can I concurrently file my L-1A New Office petition and an [EB-1C](#) employment-based immigrant petition?

The Winning Response:

NO. To qualify for permanent residence you have to prove that the US entity has been doing business for at least one year. (ed. note: That is one of the reasons why a new office L-1A is only approved for one year – you have to prove that the new company will need a manager or executive after the first year in operation. Consequently you cannot file both the L-1A New Office petition and EB-1C petition concurrently.)

students. We have another interesting question for our opinion poll. We ask all our readers to cast their vote and we appreciate that people are taking the time to give us their opinion. Keep it up! Last month's opinion was pretty one sided, with about 85 percent of the participants thinking that Bill Gates efforts will be fruitful enough to obtain an increase in the H-1B quota, whilst the remaining thought otherwise. Cast your vote to express **Your Opinion**.



Jeanne Howitz receives our congratulations for submitting the winning response for last month's **Immigration Quiz**. We received a lot of responses for our question about the possibilities of concurrently filing for L-1A

New Office petition and an EB-1C employment-based immigrant petition. We received a handful of answers, but Jeanne Howitz's was the most complete and as a result she wins a free online consultation to discuss her immigration issues with one of our attorneys. We have a new question for you this month so put on your thinking cap, pull out your research tools and get ready to write. Give it a try; who knows, we may feature your name and answer in the next newsletter. All the Best!

To ensure you receive your Immigration Newsletter, please add Immigration-Monitor@VisaPro.com to your address book or safe list.

See you next month with a lot more noise from the Immigration World!

Christine

Jeanne Howitz receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of April 2008.

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LATEST NEWS XML

[USCIS Permits F-1 Students Opportunity to Request Change of Status](#)

The U.S. Citizenship and Immigration Services (USCIS) has announced that it would allow F-1 students who are the beneficiaries of selected H-1B petitions for fiscal year (FY) 2009 to request a change of status in lieu of consular notification.

[House Judiciary to Conduct Series of Immigration Hearings](#)

The House Judiciary Committee Chairman, John Conyers, Jr. (D-MI), and Chairwoman of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Rep. Zoe Lofgren (D-CA), announced that the oversight hearing on the H-2B program will be the first in a series of immigration hearings. The subcommittee and the full committee will conduct several hearings on this issue in the coming weeks.

[USCIS Carries Out Random Selection Process for H-1B Petitions](#)

The U.S. Citizenship and Immigration Services (USCIS) today conducted the computer-generated random selection processes on H-1B petitions, to select which H-1B petitions for fiscal year 2009 (FY 2009) would continue to full adjudication. If approved these H-1B petitions will be eligible to receive an H-1B visa number..

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[Optional Practical Training for 29 Months: Are You Eligible?](#)

The U.S. Department of Homeland Security (DHS) recently released good news for students who are studying in the U.S. or intending to do so. They released an interim final rule that extends the period of Optional Practical Training (OPT) for qualified F-1 non-immigrant students from the current 12 months to a maximum of 29 months. The extension will be available to F-1 students with a degree in science, technology, engineering, or mathematics and who are employed by businesses enrolled in the E-Verify program.

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EB-1 Green Card for Multinational Managers & Executives on L-1

With the continued growth of a global economy, many companies are moving their senior personnel around the world to where they are needed the most. This includes transferring managers and executives to the U.S. to lead their company's U.S. operations. Many of these managers and executives contemplate obtaining U.S. permanent residence, a "Green Card," either to minimize the hassles associated with having to renew their nonimmigrant status or simply because they intend to remain in the U.S. and eventually become U.S. citizens. Those that are coming to the U.S. using the L-1A Intracompany Transferee Visa for managers and executives are on a direct track to qualifying for the EB-1C (Multinational Executives & Managers) employment-based Green Card. The EB-1C closely resembles the L-1A nonimmigrant visa in its basic requirements; therefore many people who qualify for an L-1A visa also qualify for EB-1C status without having to undergo the labor certification process.

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DISCUSSION CORNER

[EB1 or other employment based green card](#)

By EVHBelgium

[Filing the forms for AOS](#)

By dsme3

[Waiver Visa: How many times a year allowed to travel to US](#)

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QUESTIONS AND ANSWERS

GOT A QUESTION?

If you have a short, simple query on immigration to the U.S., send your questions to us. We will select and answer a few of the queries in every issue.

Note: Responses posted in this section provide only general information. Since immigration law is a complex matter, please [consult](#) an immigration attorney before acting upon any responses provided.

[Ask Your Question](#)

- 1. I studied Travel & Tourism Management at University and want to eventually become a hotel manager. My visa will expire at the end of next month, and my current job is a seasonal job. I would like to finish the season at the resort, and utilize the opportunity to transfer to another park which is operated by the same company. The US has so many options for my field of study and I would want to extend my visa or apply for a green card to be able to gain valuable working experience in the US.**

Depending on your current status, there are a few options that might be available for you. The first would be an [H-2B](#) visa for seasonal work. The hotel would have to submit a petition seeking the H-2B for you. Then if another hotel in the chain wants you for a different season that hotel would have to submit a separate petition for you. You could stay in the US for up to 3 years in H-2B status.

A second option would be an [H-1B](#). If a hotel wanted to hire you into a management type of position that required a bachelor's degree in hotel management/travel & tourism management - or any other position that requires a bachelor's degree -- you should be able to qualify for the H-1B. Unfortunately, there are no H-1B visas available until October 2009.

A third option would be an [H-3](#) training visa. If your petitioner has a management training program that you could take advantage of, you could get up to 2 years.

- 2. I came to US in 2004 on an H1 through company A which expired on 18 Dec 2006. Company B filed my H1 extension of stay (H1 transfer) on 30 October 2006 and on 11 Dec 2006 Company A filed my Change of Status from H-1B to L-1B with Premium processing which got approved on 21 Dec 2006. The H-1B extension of stay petition got approved on 27th of Feb 2007. I am still working with company A on L-1.**
 - a. I What is my status right now (H1 or L1)? Do I need to do something if I don't want to switch from company A to B now and wish to continue on L1? What are the options?**
 - b. Company A is asking me to write a letter to USCIS informing them that I am continuing on L1 and never took employment with company B. I am not sure what is going to happen if I write this letter. Please let me know what is going to happen if I send such a letter to USCIS. Do I really need to write such a letter to USCIS at first place?**

While there is divided opinion on this, it is 'our' understanding that your status would still be [L-1](#) under the change of status to L-1 petition filed by Company A. You would not switch to [H-1B](#) status until you started work for Company B. If you do not intend to use the H-1B you should have Company B withdraw it.

It would be better to have Company B write to withdraw the H-1B; however, it would not hurt your status to write to USCIS to explain that you are not using the H-1B for Company B. In fact it may help you to avoid any confusion with the USCIS or the consulates in the future.

[More Q&A](#)

SUCCESS STORIES

"I wanted to inform you that I went at the US consulate this morning and all went very well. They said the [L-1] visas for me and my family were accepted and I should get the passports back by the end of the week with the Visas on it.

I wanted to thank everybody involved in this case, specially Kathleen and the Visapro team. You did a wonderful job, all the documents arrived right on time, despite the Thanksgiving holiday."

Marc Désenfant,
[Come & Stay, Inc.](#)

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