

Business Immigration Weekly for the Week of April 26, 2014

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Practices: Immigration

USCIS TO BEGIN RETURNING H-1B PETITIONS THAT WERE NOT SELECTED IN THE QUOTA FOR FISCAL YEAR 2015

On Friday, May 2nd, the US Citizenship and Immigration Services (USCIS) announced that it had completed receipt of all H-1B petitions that were selected in the H-1B cap for fiscal year 2015. Similarly to last fiscal year, the cap was reached within the first week that the statutory cap opened. The USCIS received 172,500 petitions, more than the statutory cap of 65,000 visas for the regular quota and the additional 20,000 allotted for individuals who earned a U.S. Master's degree or higher. When the USCIS receives too many petitions for the limited number of visas available per fiscal year, it conducts a random, computer-generated lottery to choose which petitions it will accept and process.

All petitions that were not selected in the quota will be returned via regular mail to the mailing address listed on the petition within the next month. These returned petitions will include uncashed government filing fee checks. An employer should not assume that their petition was not selected in the quota until the employer receives an unprocessed petition in the mail. Employers should evaluate other work visa options, if any are available, for these individuals who were not selected in the quota.

As of April 10th, the USCIS began issuing email notifications for petitions that were selected in the quota that requested premium processing. On April 28th, the USCIS began processing these petitions and many employers have already received decisions or requests for additional evidence for these petitions. Employers that filed regular petitions (non-premium processing) and whose petitions were selected in the quota have also started to receive receipt notices via regular mail. It may take the USCIS up to several months to process regular petitions. In last year's cap, the USCIS took over six months to process some petitions. If a faster decision is required, a petitioner always has the option of upgrading the petition to premium processing with the payment of the additional government fee of \$1,225.

I-94 RETRIEVAL WEBSITE NOW SHOWS TRAVEL HISTORY FOR LAST FIVE YEARS

On April 30th, Customs and Border Protection (CBP) released a new version of its I-94 Retrieval website that allows nonimmigrants to view their arrival and departure history for the last five years. In March 2013, CBP eliminated the paper Form I-94 Arrival/Departure Record that was issued to nonimmigrants every time they entered the United States and turned in at the time of their departure. This paper card was then processed by CBP and entered into their systems to record when a nonimmigrant entered and departed the United States. In an effort to streamline the process and save on processing costs, the CBP introduced an electronic Form I-94

retrieval system, however, the website would only provide a traveler with information on the last entry into the United States. If the traveler was not physically present in the United States, the website would indicate no Form I-94 was available. Individuals who needed documentation of their arrivals and departures, and who did not print a new Form I-94 record upon each entry, were forced to submit a Freedom of Information Act (FOIA) request to obtain this documentation. FOIA requests are known to take up to a year. For this reason, having the last five years of entry and departure data available is a great improvement over the initial roll out of the I-94 Retrieval website.