

LABOR, EMPLOYMENT AND
BENEFITS DEPARTMENT

MARY A. GAMBARDILLA
Chair
203.363.7662
mgambardella@wiggins.com

KAREN L. CLUTE
203.498.4349
kclute@wiggins.com

SHERRY L. DOMINICK
203.498.4331
sdominick@wiggins.com

PETER J. LEFEVER
203.498.4329
plefever@wiggins.com

LAWRENCE PEIKES
203.363.7609
lpeikes@wiggins.com

JOHN G. ZANDY
203.498.4330
jzandy@wiggins.com

RACHEL B. ARNETT
203.498.4397
rarnett@wiggins.com

NAJIA S. KHALID
203.498.4314
nkhalid@wiggins.com

CAROLINE B. PARK
203.498.4317
cpark@wiggins.com

JOSHUA B. WALLS
203.363.7606
jwalls@wiggins.com

Fiscal Year 2014 H-1B Visa Cap Season Opens April 1, 2013

One of the most commonly used visa categories for U.S. employers to employ foreign nationals is the H-1B for temporary workers. H-1B visa status is available to an individual who will perform services in a "specialty occupation" that generally requires a bachelor's degree or its equivalent to perform the responsibilities the position entails.

There is an annual quota or cap for H-1B visas of 65,000. H-1B petitions for the fiscal year (FY) beginning on October 1 (start date for employment) may be submitted beginning on April 1 of that year (six months in advance). Petitions may be submitted until such time as the quota is met. Once the cap for the fiscal year is reached, no H-1B petitions will be approved until the next fiscal year's filing season begins.

The following groups are not subject to the general H-1B cap [INA § 214(g)(5)-(11)]:

- Employment at a cap-exempt employer, including:
 - institutions of higher education,
 - nonprofit entities related to or affiliated with an institution of higher education,
 - nonprofit research organizations, and
 - governmental research organizations.
- Certain employees counted against the cap during the past 6 years and those already in H-1B status who are applying for an extension of stay, amendment, or change of employer.
- J-1 physicians granted Conrad waivers of the 212(e) requirement.
- Citizens of Singapore and Chile applying under one of the Free Trade Agreements.

- The first 20,000 employees who have earned a U.S. master's degree or higher.

FY 2014 CAP

The U.S. Citizenship and Immigration Services (USCIS) will begin accepting cap-subject H-1B petitions on Monday, April 1, 2013. Under current regulations, the USCIS must accept H-1B cap-subject cases during the first five business days in April, and if the cap is reached or exceeded, no additional cases can be filed toward the cap until the next fiscal year. If the H-1B cap is exceeded in the first five days, the USCIS will conduct a random lottery to select which cases will be processed, and the cases not selected will be rejected. If the H-1B cap is not met in the first five days of filing, the USCIS continues to accept such cases until the cap limit is reached.

In FY 2013, the H-1B cap limit was reached on June 11, 2012. In recent years there has been an increased trend for shorter cap-filing windows. Employers who wish to utilize the H-1B visa category are urged to make preparations without delay.

Please contact Najia Khalid at 203.498.4314 or nkhalid@wiggins.com if you have any questions.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.