

H-1B visa update: cap reached again; receipt notices being issued

Following the pattern set during the last several years, U.S. Citizenship and Immigration Services (USCIS) announced on April 6, 2018 that the H-1B cap for Fiscal Year 2019 (FY19) had already been reached. USCIS began accepting petitions for FY19 on April 2, 2018 and continued accepting them until April 6, 2018. The agency received 190,098 petitions during the first week of April, 2018. That number is about 5% fewer than the number of petitions that were filed the previous year.

On April 11, 2018, USCIS conducted a lottery to determine which petitions it would review. The agency has started to send receipt notices to petitioners whose cases were selected in the lottery. As of this writing, that process is continuing. Documents for cases that were not selected will be returned to the attorney of record by regular mail, along with the un-cashed checks for the filing fees. However, the return process will not begin until USCIS has finished issuing receipt notices for the cases that were selected in the lottery. Last year, USCIS started returning documents for rejected cases in June.

As noted above, employers filed fewer H-1B petitions this year than last year. It is likely that this is at least partially due to the additional hurdles that the Trump Administration has imposed on the H-1B process. President Trump's "[Buy American and Hire American](#)" Executive Order, which was issued on April 18, 2017, directed USCIS to apply very strict scrutiny to H-1B petitions. The result was an explosion in the number of "Requests for Evidence" (RFEs, or demands for additional information) issued by USCIS. These RFEs have questioned whether the job being offered to the foreign worker is truly a "specialty occupation," whether the salary is, in fact, appropriate, and whether the worker will be working for the employer at the designated location. The number of denials also increased dramatically since the issuance of the Executive Order, and even cases that were almost assured of being approved in past years, such as applications to extend a worker's current H-1B status, have been questioned and even denied.

Despite these difficulties, U.S. employers still have job openings to fill. That is why they filed almost twice as many H-1B petitions for FY19 than the annual allotment of 85,000. Most of those employers are still waiting to find out if the petitions they filed were selected in the lottery.