

IS YOUR COMPANY READY FOR 21ST CENTURY IMMIGRATION?

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H-1B BLACKOUT: FEELING LUCKY? **CIS HAS THE LOTTERY FOR YOU.**

For businesses in need of Professional employees, the H-1B Specialty Occupation category for temporary workers can be invaluable. Certain individuals who possess a baccalaureate degree in a specialty field (or the equivalent in experience), and who have the proper credentials can qualify for H-1B status. In previous years, a company that wanted to sponsor such a worker would file a petition at the time of need.

Now, however, because of the over subscription of the H-1B category, **organizations must plan in advance of April 1 each year.** The law provides for 65,000 visas per government fiscal year—in one year U.S. Citizenship and Immigration Services received 122,000 H-1B applications. CIS's solution to this high influx of applications has been to implement a lottery system.

☞ **Businesses that are thinking about sponsoring an H-1B worker must start planning now so that we can file petitions on March 31, 2013.** If CIS receives applications at the rate of the current trend, which we fully expect, **petitions will be gone after April 1, or shortly thereafter.** Again, we will face an H-1B blackout for the full year.

☞ For those who have **Master degrees** from a U.S. school, an additional 20,000 visas are available. Master Cap cases should also be filed by April 1.

☞ Though the application date is April 1, the potential employee cannot begin work until October 1, 2013. **October 1, 2013, is the first day of the fiscal year for the Federal government.**



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Petitioners may file an H-1B petition up to six months in advance of the need for the worker. Therefore, the first day of possible filing is April 1 every year; because of the overwhelming need of H-1Bs, **in some years this date has also become the last date of filing as well.**

In 1990, Congress passed IMMACT90, which imposed an annual cap of 65,000 on H-1B visas. Some institutions are exempt from the yearly H-1B Cap, but not many. In Fiscal Year 1997 (10/96-10/97), the cap was met before the end of the fiscal year. Subsequently, the cap was raised to 115,000 and then 195,000 for fiscal years 1999 through 2003, but then reverted back to 65,000 in 2004.

From FY 2004 to 2009, the cap had been hit earlier and earlier in each following year. **Then the recession hit, and numbers lasted longer, but even in the depths of the bad economic times, the H-1B numbers still did not last the full year as was the original intention of the law.** As you can see from the below chart, H-1Bs were gone within 2 ½ months, compared with the prior year, when they lasted 5 additional months. This upswing in the use of the H-1B category means that this year's numbers are likely to run out on April 1 or soon thereafter.

FY 2013—Cap Hit June 11, 2012
FY 2012—Cap Hit November 22, 2011
FY 2011—Cap Hit January 26, 2011
FY 2010—Cap Hit December 21, 2009

FY 2009—Cap Hit April 7, 2008
FY 2008—Cap Hit April 3, 2007
FY 2007—Cap Hit April 1, 2006
FY 2006—Cap Hit August 10, 2005
FY 2005—Cap Hit April 1, 2005
FY 2004—Cap Hit February 17, 2004
FY 2003—195,000 cap; 105,314 Cap-subject visas approved
FY 2002—195,000 cap; 79,100 Cap-subject visas approved

As they say in the lottery biz, you can't win if you don't play.

If your company has a talented foreign national whom you want to have at least the chance of employing, call us to get your case in the pipeline.

The DeFranco Law Group offers this free Email Alert service to provide information on recent developments in immigration law. Questions? Please send us an email at mdefranco@yourimmigrationcenter.com

About the Author

Marisa DeFranco is an immigration attorney with 17 years of experience. In 2011, she was honored as a **Top Woman of Law** by Massachusetts Lawyers Weekly. Attorney DeFranco is also a **National Award Winner**, receiving the National Legal Aid & Defenders Association's Beacon of Justice Award for her Pro Bono Service (300+ hours of service in 15 months) in 2010.

Attorney DeFranco recently had an [Opinion column published in the Boston Herald](#), and was previously published in the ABA's book, *The Road to Independence: 101 Women's Journeys to Starting Their Own Law Firms*. She has authored several scholarly articles, including [Gender Asylum: Bringing the Law into the 21st Century](#). In 2011-2012, Ms. DeFranco was a candidate for U.S. Senate in Massachusetts. Ms. DeFranco is a [frequent contributor on WGBH](#) and [CBS Nightside with Dan Rea](#).

DeFranco Law Group specializes in all aspects of immigration and nationality law, including litigation in Federal Court, business and family-based cases, asylum and naturalization. The firm's business-based immigration practice includes hands-on experience in a wide range of industries, from small businesses to Fortune 500, including healthcare, IT, biotechnology, construction, restaurant and service industries and entrepreneurs.

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