



Marks Gray Immigration Update
April 2014



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Shareholder

The H-1B Cap Has Been Met

USCIS have received more than 172,500 H-1B cap-subject petitions and have finalized their computer generated lottery. For petitions selected, USCIS has started issuing receipt notices. Petitions not selected will be returned. The USCIS expects to complete the issuance of petitions by May. Considering the high rejection rate, this e-newsletter focuses on FAQs related to H-1B status. Please remain patient and hopeful while also exploring alternatives.

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FAQ: Alternatives to Cap-Subject H-1B Petitions

Unfortunately, many foreign nationals may have to wait until April 1, 2015 for another chance at filing for H-1B status. The following alternatives should be considered for affected employees:

Cap-Exempt H-1B Visa

These include petitions filed primarily for employment at an institution of higher education, a related or affiliated nonprofit entity, nonprofit research organization, or governmental research

organization. H-1B visas are also available for beneficiaries filing for amendments, extensions, and certain employment transfers. Continue to read [here](#).

FAQ: Student Options for Status Extension While Waiting on an H-1B

1. How do I remain in status if I am in OPT / F-1 and an employer filed a cap-subject H-1B petition on my behalf that does not become effective until October 1?



Most likely the student will need to apply for a cap-gap extension I-20. This is based on a regulatory provision which extends an eligible F-1 student's status to bridge the gap between the end of F-1 status and start of H-1B status on October 1, 2014.

This provision will allow the student to remain in the US during the "gap" and is available to students who, as of April 1, 2014 were on approved OPT or in their 60-day grace period and have a pending or approved change-of-status October 1, 2014 H-1B petition pending with the USCIS that was filed prior to the expiration of their OPT or 60-day grace period. Click [here](#) to read more.

BALCA Finds Evidence of Prior Experience Sufficient

Many employment-based "green card" cases require evidence that the employee had the mandatory work experience or knowledge prior to joining the sponsoring employer. On April 2, BALCA (the Board of Alien Labor Cert. Appeals) reversed a PERM denial and found that "the Employee's submission of the signed letter in response to the Audit substantially complied with the Audit request, and the Certifying Officer's (CO) denial was not warranted." In the Audit, the employer was asked to "provide documentation" without any specification. Later, the CO suggested documentation such as "a notarized affidavit, certifications, licenses, or other substantive proof."

BALCA found the employer had complied with the Audit request. This case is instructive as future Audit Notices could specifically request notarized statements or affidavits to prove prior work experience. To read the decision, click [here](#).

May Visa Bulletin Released

EB-1 remains current across the board and EB-2 for Mexico and Philippines are current. EB-2 India remains unchanged at November 15, 2004 and EB-2 China moves forward to March 8, 2009. EB-3 China and Mexico move forward to October 1, 2012. EB-3 Philippines moves forward to June 15, 2007, while EB-3 India remains the same September 15, 2003. Click [here](#) to read the entire bulletin.

Support for In-State Tuition for Undocumented Students

Governor Scott and the Florida legislature are supporting bills that will allow particular undocumented immigrants to pay in-state college tuition rates. Currently, Governor Scott is

supporting the Senate's version of the bill (SB 1400), which also bars universities from raising tuition above a certain level and "keeps college affordable for Florida's students." The House version of the bill (HB 851) is expected to pass with bi-partisan support, and receive a full vote of the House in the coming weeks. There is also support for this proposal from Florida colleges and universities. FIU and Miami Dade College already provide partial tuition waivers to some students with DACA status.

Some H-4s May Receive an EAD

The White House announced possibly allowing certain H-4 visa holders to apply for work authorization while their spouses are in valid H-1B status. The announcement limits the work authorization to "spouses of certain high-skill workers on H-1B visas," but does not define this term. In 2012, the DHS proposed the issuance of work authorization to H-4s whose H-1B spouse "have begun the process of seeking lawful permanent resident status through employment and have extended their authorized period of admission or "stay" in the U.S. under the AC21 Act". There is a significant amount of uncertainty in this announcement but it is welcome news to many. For additional information, click [here](#).

Best Life Tips:

To Achieve, Don't Cut Into Your Sleep!

With the H-1B filings and tax seasons in full force, April can be a month filled with stress and lack of sleep.



However, the best way to manage these stressors is to get sufficient sleep. "Most people treat sleep as a luxury, but it is definitely a necessity," says James B. Maas, Ph.D., an internationally recognized authority on sleep and performance who served as Stephen H. Weiss Presidential Fellow, Professor and past Chairman of Psychology at Cornell University in Ithaca, N.Y. Click [here](#) to read more.

NEW page NOTEWORTHY

➔ On April 4, Marks Gray in partnership with Bi-Lo Holdings legal team hosted a mentoring event for Florida Coastal School of Law students interning at Bi-Lo Holdings. During the event attorneys answered insightful questions from students such as; work and life balance, how to prepare for your first legal job and others. We were all inspired and learned from the exchange of information.

Marks Gray is proud of its long history and partnerships with Winn-Dixie/Bi-Lo. Sam Marks, one of Marks Gray's founders, represented Table Supply of Miami, Florida in the 1939 acquisition of Winn & Lovett Grocery Company of Jacksonville, which later became Winn Dixie. Sam Marks was the company's first General Counsel and remained actively involved with the company's legal matters until Winn-Dixie hired its first in-house counsel in the 1960s.



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