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United States Citizenship and Immigration Services

Report on H-1B Petitions

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Report on H-1B Petitions

The Immigration Act of 1990 established numerical limitations on the H-1B nonimmigrant classification to provide U.S. employers facilitated access to foreign skilled workers while ensuring worker protections. The cap of [then] 65,000 was reached for the first time in Fiscal Year 1997 and again in Fiscal Year 1998 as demand increased significantly in the burgeoning technology sector.

In October 1998, the American Competitiveness and Workforce Improvement Act (ACWIA) was enacted (Public Law 105-277, Division C). The ACWIA temporarily increased the H-1B cap to 115,000 for Fiscal Years 1999 and 2000 and to 107,500 for Fiscal Year 2001 while establishing an affirmative role for U.S. employers to assist with education and training efforts. Under ACWIA, an H-1B Nonimmigrant Petitioner Fee account was established to fund training and education programs administered by the Department of Labor and the National Science Foundation. Employers, unless explicitly exempt under the law, were required to pay a \$500 fee for each H-1B worker sponsored. Employers who qualified as an institution or organization described in section 212(p)(1) of the Immigration and Nationality Act (INA) were exempt from payment of this fee. Additionally, the ACWIA imposed quarterly and annual reporting requirements on the U.S. Citizenship and Immigrations Services (USCIS) concerning the H-1B fee, fee exemption, and demographic H-1B worker data. The ACWIA fee of \$500 was initially set to sunset on October 1, 2001.

The 106th Congress passed two H-1B bills that impacted the H-1B program; enacted as the untitled Public Law 106-311 and Public Law 106-313, the American Competitiveness in the Twenty-First Century Act (AC-21). First, pursuant to Public Law 106-311, Congress raised the H-1B petitioner fee from \$500 to \$1,000 while exempting additional types of employers not described in INA 212(p)(1) from payment of this fee and extending the applicability of the fee provision to qualifying petitions filed by employers through September 30, 2003. As such, no employers who filed petitions in fiscal year 2004 were required to pay the \$1000 fee. Second, the AC-21 temporarily raised the H-1B cap to 195,000 for Fiscal Years 2001, 2002 and 2003 while exempting certain H-1B workers from these numerical limits. Starting in Fiscal Year 2004, the H-1B cap was reduced back to 65,000 per fiscal year.

This report is mandated under section 416(c)(1) of the ACWIA that states: "...the Attorney General shall notify, on a quarterly basis, the Committees on the Judiciary of the U.S. House of Representatives and the Senate of the numbers of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act during the preceding 3-month period." Furthermore, as

described in section 416(c)(3), this report "...shall include the number of aliens who were issued visas or otherwise provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the Immigration and Nationality Act (as added by section 415 of this title)."

During the transition to the Department of Homeland Security, USCIS failed to identify and assume the reporting responsibility for this report and therefore did not provide the report in a timely manner. This report covers the four quarters of Fiscal Year 2004.

This report is presented in two parts: Part I provides information on the number of aliens granted H-1B status while Part II provides information on the number of employers who would have been exempt from the nonimmigrant H-1B petition fee required under ACIWA if the fee had not sunset on October 1, 2003. In both parts of this report, quarterly and annual data for Fiscal Year 2004 are presented.

Pursuant to section 214(c) of the INA, U.S. employers using the H-1B program are required to file a petition with the Attorney General on behalf of an alien worker (the beneficiary). The petition must be approved before a visa is granted or an alien is provided nonimmigrant status. Accordingly, the petition data is the basis of this report.

Part I. The number of aliens provided status under section 101(a)(15)(H)(i)(b) of the INA.

Table 1 provides information on the number of H-1B petitions filed by employers in Fiscal Year 2004. This table also provides information on the number of H-1B petitions approved by the USCIS during this period. Petitions filed in a particular quarter are not necessarily adjudicated in that same quarter.

U.S. employers file the petition with the USCIS to sponsor an alien worker as an H-1B nonimmigrant. This petition may be filed to sponsor an alien for an initial period of H-1B employment or to extend the authorized stay of an alien as an H-1B nonimmigrant. Several employers may file a petition for the same alien although for H-1B cap purposes such an alien will only count once against the cap. Additionally, an employer may file the petition to sponsor an alien who currently has status as an H-1B nonimmigrant working

for another employer or to seek an amendment of a previously approved petition. In the case of a petition to amend a previously approved petition, there may be no corresponding request to extend the authorized stay of the beneficiary. For example, an employer may file an amended petition notifying the USCIS of a different location where the beneficiary will be employed or a material change in the beneficiary's job duties. Therefore, the total number of approved petitions may exceed the actual number of aliens who are provided nonimmigrant status as H-1B.

Of the 312,200 petitions filed in Fiscal Year 2004 and 287,418 approved in Fiscal Year 2004, approximately 240,245 petitions were both filed and approved during Fiscal Year 2004. The remaining 47,173 petitions approved were filed in prior fiscal years.

Table 1. Number of H-1B Petitions Filed and/or Approved by Quarter: FY 2000-FY 2004

	Fiscal Year	Oct to Dec	Jan to Mar	Apr to Jun	Jul to Sep	Total
Petitions Filed	2000	73,875	90,762	55,692	78,717	299,046
	2001	128,758	75,395	65,942	71,940	342,035
	2002	53,888	51,905	53,429	55,968	215,190
	2003	50,633	52,722	61,302	66,373	231,030
	2004	69,835	64,022	74,823	103,520	312,200
Petitions Approved*	2000	42,453	69,523	80,128	65,536	257,640
	2001	57,953	114,070	82,677	76,506	331,206
	2002	62,212	51,363	34,003	49,959	197,537
	2003	47,867	50,648	57,514	61,311	217,340
	2004	60,279	67,850	71,284	88,005	287,418

* Regardless of when filed.

Part II. The number of aliens provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p) (1) of the INA.

The ACWIA added section 214(c)(9)(A) of the INA to require that the Attorney General impose a fee on an employer filing a petition initially to grant an alien status as H-1B; to extend the nonimmigrant stay of an alien as an H-1B (unless the employer previously has obtained an extension for such alien); or to obtain authorization for an alien having such status to change employers. The ACWIA provisions exempted certain types of employers described in section 212(p) of the INA from the payment of this fee. The fee, effective December 1, 1998, was initially set to sunset on September 30, 2001.

With the passage of Public Law 106-311, the fee was increased from \$500 to \$1,000, effective on December 18, 2000, and was required for all qualifying petitions filed through September 30, 2003.

Public Law 106-311 also amended section 214(c)(9)(A) of the INA to specify which employers are exempt from the fee by adding additional types of employers that would be exempt from the fee in addition to those employers described under section 212(p)(1) of the Act.

As noted above, the fee sunset as of October 1, 2003 and as such, there was no additional \$1000 fee required of any employers filing petitions during the Fiscal Year 2004. However, while no additional fee was collected, USCIS still collected the data regarding petitions filed by the types of employers as required under ACWIA and the other types of employers that would have also been fee exempted if the \$1000 fee was required.

Due to that legislative amendment, this report exceeds the reporting mandate: it covers all employers that would have been exempt from the fee that filed during Fiscal Year 2004, not only those described in 212(p)(1). Additionally, the USCIS does not require the fee for certain administrative reasons. To summarize, these exemptions would have applied to employers that are:

- ◆ institutions of higher education defined in section 101(a) of the Higher Education Act of 1965;
- ◆ non-profit organizations or entities related to or affiliated with an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965;
- ◆ non-profit and Government research organizations;

- ◆ filing a second or subsequent request for an extension of stay for a particular alien;
- ◆ filing an amended petition without a request to extend the nonimmigrant stay of the alien beneficiary;
- ◆ filing a petition to correct a USCIS error;
- ◆ primary or secondary education institutions; or
- ◆ non-profit entities engaging in established curriculum-related clinical training of students registered at any such institution.

Table 2 shows the number of petitions that were filed in Fiscal Year 2004 and the number of petitions that would have been exempted from the fee. Table 3 shows the same information for all petitions approved in Fiscal Year 2004 regardless of when filed. Approximately 240,245 petitions are included in both tables indicating the petitions were both filed and approved during Fiscal Year 2004. As explained in Part I, the total number of approved petitions may exceed the actual number of aliens who are provided nonimmigrant status as H-1B since a single alien may be the beneficiary of multiple petitions.

Table 2. Number of H-1B Petitions Filed by Quarter and Reason of Exemption from Fee: FY 2004

For Fiscal Year 2004:	Oct 2003 to Dec 2003	Jan 2004 to Mar 2004	Apr 2004 to Jun 2004	Jul 2004 to Sep 2004	FY 2004
TOTAL PETITIONS FILED	69,835	64,022	74,823	103,520	312,200
Without any fee exemptions	58,842	51,679	57,588	89,099	257,208
With at least one exemption	10,993	12,343	17,235	14,421	54,992
REASON FOR EXEMPTION					
Employer is an institution of higher Education.	5,781	6,291	9,080	7,759	28,911
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,198	2,731	4,759	3,072	12,760
Employer is a nonprofit research organization or a government research organization	1,645	1,853	2,187	1,945	7,630
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	2,921	3,293	3,577	3,380	13,171
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	404	385	437	465	1,691
Employer is filing a petition in order to correct a USCIS error	35	29	32	34	130
Employer is a primary or secondary education institution	805	904	1,504	1,463	4,676
Employer is a non-profit entity engaged in clinical training	1,212	1,468	2,309	1,769	6,758

Table 3. Number of H-1B Petitions Approved by Quarter and Reason of Exemption from Fee: FY 2004

For Fiscal Year 2004:	Oct 2003 to Dec 2003	Jan 2004 to Mar 2004	Apr 2004 to Jun 2004	Jul 2004 to Sep 2004	FY 2004
TOTAL PETITIONS APPROVED	60,279	67,850	71,284	88,005	287,418
Without any fee exemptions	49,200	54,516	53,832	72,111	229,659
With at least one exemption	11,079	13,334	17,452	15,894	57,759
REASON FOR EXEMPTION					
Employer is an institution of higher Education.	5,375	6,781	8,443	8,085	28,684
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,092	2,731	4,208	3,675	12,706
Employer is a nonprofit research organization or a government research organization	1,450	1,960	2,282	2,129	7,821
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	3,046	3,408	5,296	3,888	15,638
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	681	591	521	595	2,388
Employer is filing a petition in order to correct a USCIS error	40	41	32	27	140
Employer is a primary or secondary education institution	1,100	1,195	1,216	1,594	5,105
Employer is a non-profit entity engaged in clinical training	1,390	1,520	2,130	2,201	7,241