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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 provisions filed by employers through September 30, 2003. 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.

On December 8, 2004, Congress passed the Omnibus Appropriations Act for FY 2005 (Public Law 108-447) which contained the H-1B Visa Reform Act that made several changes to the H-1B program. First, the H-1B Visa Reform Act reinstated the ACWIA fee which had sunset on October 1, 2003 and raised it from \$1,000 to \$1,500 per qualifying petition except for certain employers. Specifically, certain types of employers are exempt from the fee altogether and employers who have less than 25 full-time

equivalent employees who are employed in the United States (determined by including the number of employees employed by any affiliate or subsidiary of such employer) only have to pay half the \$1,500 fee. This fee is applicable to any H-1B petition filed with USCIS after December 8, 2004. Second, the H-1B Visa Reform Act instituted a new Fraud Prevention and Detection Fee of \$500 which must be paid by employers seeking an initial grant of H-1B or L nonimmigrant classification or by an employer seeking to change an alien's employer within those classifications. The new fee does not apply to petitions to extend or amend an alien's stay in H-1B or L classification filed by a current employer. This fee applies to any qualifying petition filed with USCIS on or after March 8, 2005.

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 2005.

This report is presented in three parts: Part I provides information on the number of aliens granted H-1B status, Part II provides information on the number of employers requiring the additional ACWIA petition fee as reinstated by the H-1B Visa Reform Act and those exempt from the nonimmigrant H-1B ACIWIA petition fee, while Part III provides information on the number of employers required to submit the Fraud Prevention and Detection Fee. In all parts of this report, quarterly and annual data for Fiscal Year 2005 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 2005. 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 266,474 petitions filed in Fiscal Year 2005 and 267,131 approved in Fiscal Year 2005, approximately 212,100 petitions were both filed and approved during Fiscal Year 2005. The remaining 55,031 petitions approved were filed in prior fiscal years.

Table 1. Number of H-1B Petitions Filed and/or Approved by Quarter: FY 2001-FY 2005

	Fiscal Year	Oct to Dec	Jan to Mar	Apr to Jun	Jul to Sep	Total
Petitions Filed	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
	2005	41,020	41,847	98,831	84,776	266,474
Petitions Approved*	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
	2005	58,141	60,614	71,200	77,176	267,131

* 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)(1) 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 sunset on 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 fee exempt to the ACWIA fee including those employers described under section 212(p)(1) of the Act.

The H-1B Visa Reform Act, enacted as part of the Omnibus Appropriation Act of FY 2005, reinstated the ACWIA fee and raised it from \$1,000 to \$1,500 per qualifying petition except for certain employers. Specifically, certain types of employers as described in 214(c)(9)(A) of the Act are still exempt from the ACWIA fee all together and employers who have less than 25 full-time equivalent employees who are employed in the United States (determined by including the number of employees employed by any affiliate or subsidiary of such employer) only have to pay half the \$1,500 ACWIA fee. This fee is applicable to any qualifying H-1B petition filed with USCIS after December 8, 2004.

Due to that legislative amendment, this report exceeds the reporting mandate: it covers all employers exempt from the fee as described in 214(c)(9)(A), not only those described in 212(p). Additionally, the USCIS does not require the fee for certain administrative reasons.

To summarize, these exemptions apply 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 2005 and the number exempted from the fee. Table 3 shows the same information for all petitions approved in Fiscal Year 2005 regardless of when filed. Approximately 212,100 petitions are included in both tables indicating the petitions were both filed and approved during Fiscal Year 2005. 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 2005

For Fiscal Year 2005:	Oct 2004 to Dec 2004	Jan 2005 to Mar 2005	Apr 2005 to Jun 2005	Jul 2005 to Sep 2005	FY 2005
TOTAL PETITIONS FILED	41,020	41,847	98,831	84,776	266,474
Without any fee exemptions	29,296	22,152	76,359	62,381	190,188
With at least one exemption	11,724	19,695	22,472	22,395	76,286
REASONS FOR ADDITIONAL FEE*					
Employer of no more than 25 full-time equivalent employees	N/A	3,642	54,041	44,256	101,939
Employer of at least 25 full-time equivalent employees	N/A	1,313	22,308	18,122	41,743
Number of full-time equivalent employees unknown	N/A	N/A	10	3	13
REASON FOR EXEMPTION					
Employer is an institution of higher Education.	5,861	6,895	8,581	7,833	29,170
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,380	3,212	5,137	3,587	14,316
Employer is a nonprofit research organization or a government research organization	1,717	1,979	2,173	1,996	7,865
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	3,893	7,677	8,325	10,428	30,323
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	459	3,967	963	1,258	6,647
Employer is filing a petition in order to correct a USCIS error	28	44	51	67	190
Employer is a primary or secondary education institution	413	1,002	2,504	2,127	6,046
Employer is a non-profit entity engaged in clinical training	1,454	2,612	3,882	2,921	10,869

* Requirement not effective until March 2005

Table 3. Number of H-1B Petitions Approved by Quarter and Reason of Exemption from Fee: FY 2005

For Fiscal Year 2005:	Oct 2004 to Dec 2004	Jan 2005 to Mar 2005	Apr 2005 to Jun 2005	Jul 2005 to Sep 2005	FY 2005
TOTAL PETITIONS APPROVED	58,141	60,614	71,200	77,176	267,131
Without any fee exemptions	46,929	39,879	50,592	56,288	193,688
With at least one exemption	11,212	20,735	20,608	20,888	73,443
REASONS FOR ADDITIONAL FEE*					
Employer of no more than 25 full-time equivalent employees	N/A	254	12,262	14,984	27,500
Employer of at least 25 full-time equivalent employees	N/A	758	33,392	40,606	74,756
Number of full-time equivalent employees unknown	N/A	208	1	1	210
REASON FOR EXEMPTION					
Employer is an institution of higher Education.	5,996	8,544	7,872	7,998	30,410
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,385	3,490	4,629	3,856	14,360
Employer is a nonprofit research organization or a government research organization	1,584	2,421	2,009	1,942	7,956
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	2,935	7,856	7,306	8,685	26,782
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	403	2,830	1,811	1,104	6,148
Employer is filing a petition in order to correct a USCIS error	32	51	48	53	184
Employer is a primary or secondary education institution	711	1,040	1,960	2,244	5,955
Employer is a non-profit entity engaged in clinical training	1,320	2,580	3,450	3,181	10,531

* Requirement not effective until March 2005

PART III. Number of petitioners required to submit fraud prevention and detection fee pursuant the H-1B Reform Act of 2004

The H-1B Visa Reform Act of 2004 also imposed an additional fee of \$500 (“Fraud Prevention and Detection Fee”) for certain H or L petitions. A U.S. employer seeking initial approval of H-1B or L nonimmigrant status for a beneficiary, or seeking approval to employ an H-1B or L nonimmigrant currently working for another U.S. employer must submit this additional \$500 fee. This fee applies to any qualifying petition filed with USCIS on or after March 8, 2005.

Table 4 shows the number of petitions that were filed after March 8, 2005 that required submission of the Fraud Prevention and Detection Fee. Table 5 shows the same information for all petitions approved during the same period regardless of when filed.

Table 4. Number of H-1B Petitions Filed Requiring Fraud Prevention and Detection Fee: FY 2005

For Fiscal Year 2005:	Mar 2005 to Jun 2005	Jul 2005 to Sep 2005	FY 2005
*TOTAL PETITIONS FILED	77,964	59,697	137,661
REASONS FOR FEE			
New employment (including new employer filing H1B extension)	71,157	48,967	120,124
New concurrent employment	385	378	763
Change of employer	6,422	10,352	16,774

*Effective Date: March 8, 2005

Table 5. Number of H-1B Petitions Approved Requiring Fraud Prevention and Detection Fee: FY 2005

For Fiscal Year 2005:	Mar 2005 to Jun 2005	Jul 2005 to Sep 2005	FY 2005
*TOTAL PETITIONS APPROVED	44,570	54,190	98,760
REASONS FOR FEE			
New employment (including new employer filing H1B extension)	40,776	45,565	86,341
New concurrent employment	240	299	539
Change of employer	3,554	8,326	11,880

*Effective Date: March 8, 2005