

# More H-1Bs Needed to Keep America Competitive

By REUBEN S. SEGURITAN

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On August 12, 2005, the US Citizenship and Immigration Services (USCIS) announced that it could no longer process H-1B petitions for Fiscal Year (FY) 2006 that were received after August 10, 2005.

US employers who were not able to file on or before August 10, 2005 would have to wait for the FY 2007 H-1B cap to open before they can hire foreign professionals.

## *How Cap Was Determined*

The USCIS monitored closely the H-1B petitions filed for FY 2006 and made projections based on the 65,000 annual cap. When the petitions filed exceeded the cap, the USCIS determined which petitions received on August 10, 2005, the "final receipt date," were seeking numbers for FY 2006, for instance.

Petitions received on the final receipt date will be subjected to computer-generated random selection to determine which ones will receive a FY 2006 number. The remaining petitions without a FY 2006 number and not exempt from the cap will be rejected and the filing fee will be returned.

Rejected petitions may be re-filed beginning April 1, 2006 for FY 2007 H-1B visas that would allow the foreign

worker to start working on October 1, 2006.

## *Importance of H-1B Program*

The H-1B visa program is a temporary worker visa program that enables US employers to hire foreign professionals to fill jobs that require as a minimum a bachelor's degree or its equivalent in a field of specialty. Under this program, these foreign professionals enter the US to work for a temporary period of up to a maximum of six years.

The H-1B program has proven to be extremely helpful to US employers who need to keep up with the demands of a global economy. Apart from filling job vacancies that the existing US workforce could not satisfy from time to time, the H-1B program enables US employers to take advantage of the special skills and knowledge of foreign professionals such as current trends or conditions of the international markets.

## *Annual Cap*

There were never enough H-1B visas in recent years to meet the demands of the US economy.

The annual cap for H-1B visas was initially set at 65,000 under the Immigration and Nationality Act of 1990. The economic boom, however, left a job market void for more foreign professionals that US employers could not fill because of the numerical restriction.

In response, Congress passed the American Competitiveness in the 21<sup>st</sup> Century Act, which provided for an increase in the H-1B cap to a total of 195,000 over three fiscal years. This law, however, was a temporary fix that failed to provide a lasting solution to US employers' need for foreign professionals. There were no congressional efforts to extend the effectivity of the increased H-1B cap, and as a consequence, the annual cap dipped back to 65,000 by FY 2004.

Reverting to the 65,000 cap, however, has only made the demand for H-1Bs progressively worse over the past three years. The FY 2004 cap was reached on February 1, 2003 or barely five months into the fiscal year, while the FY 2005 cap was reached on the first day of the fiscal year itself, that is, on October 1, 2005. And with the FY 2006 cap reached even *before* the fiscal year has begun, US

employers ought to start questioning the wisdom of the 65,000 cap.

#### *H-1B Visa Reform*

There is little that the H-1B Visa Reform Act of 2004 had done to provide US employers better access to the skills and expertise of foreign professionals.

This law provides that 20,000 H-1B visas for foreign nationals with advanced degrees earned from a US institution. This does not mean the annual cap for H-1Bs has increased. What the law does is to exempt advanced degree holders from the 65,000 annual cap. Instead, they will be counted against the 20,000 H-1B visas made available under the new law. When the 20,000 visas are exhausted, subsequent approvals for advanced degree foreign nationals will be counted against the 65,000 annual cap as with the rest of those with bachelor's degrees.

According to the USCIS, it has received approximately 10,000 petitions for H-1B advanced degree holders for FY 2005 and 8,000 for FY 2006, suggesting that the 20,000 exemptions against the annual cap may not be exhausted.

Apart from the mad rush to be accommodated in the annual cap for H-1Bs, US employers would have to pay more in filing fees. The H-1B Visa Reform Act re-imposed the H-1B training fee of up to \$1,500 and now requires the anti-fraud fee of \$500. This, on top of the basic filing fee would be enough to make US employers think twice about hiring foreign professionals.

#### *Action Plan*

The H-1B visa program needs to be modified further. The 65,000 numerical limit simply does not meet the requirements of US employers who need to keep up with global competitors. It is not a simple matter of picking a number upwards of 65,000. There must be some room for flexibility as the demand for H-1Bs could change from year to year.

There is also a need to re-examine the additional fees for filing H-1Bs. Small US employers must not be prevented from having access to top foreign talents, which the training fee and anti-fraud fee under the H-1B Reform Act does at present. Such expense, in addition to the lengthy processing time practically discourages small US businesses from taking advantage of the H-1B program.