



Report on H-1B Petitions

Fiscal Year 2008, Annual Report

October 1, 2007 – September 30, 2008

April 8, 2009



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Foreword

I am pleased to present the following, "Report on H-1B Petitions for Fiscal Year 2008" which has been prepared by U.S. Citizenship and Immigration Services. The report has been compiled in response to a legislative requirement accompanying the American Competitiveness and Workforce Improvement Act of 1998 (P.L. 105-277).

The report provides the number of persons issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA). It also provides 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 INA.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee

The Honorable John Conyers
Chairman, House Judiciary Committee

The Honorable Lamar Smith
Ranking Member, House Judiciary Committee

Inquiries relating to this report may be directed to the Department of Homeland Security Office of Legislative Affairs at (202) 447-5890.

Sincerely,

A handwritten signature in black ink, appearing to read "Chani W. Wiggins".

Chani W. Wiggins
Assistant Secretary
Office of Legislative Affairs

Executive Summary

The American Competitiveness and Workforce Improvement Act (ACWIA), Public Law 105-277, Division C, imposes quarterly reporting requirements on the U.S. Citizenship and Immigrations Services (USCIS) concerning the H-1B fee and fee exemption.

To fulfill this requirement, U.S. Citizenship and Immigration Services submits the following report to cover the four quarters of Fiscal Year 2008, October 1, 2007 – September 30, 2008. The report provides information on: the number of aliens granted H-1B status; on the number of employers requiring an additional ACWIA petition fee as reinstated by the H-1B Visa Reform Act and those exempt from the nonimmigrant H-1B ACWIA petition fee; and 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 2008 are presented.

The data contained in this report is accurate as of October 2008.

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I. Legislative Requirement

The American Competitiveness and Workforce Improvement Act (ACWIA), Public Law 105-277, Division C, includes the following requirement under section 416(c)(1):

“(T)he 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).”

II. Background

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 then existing cap of 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 bills that impacted the H-1B program:

- A bill 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, 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 no more 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 that must be paid by an employer 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 covers the four quarters of Fiscal Year 2008. This report is presented in three parts: Section 3.1 provides information on the number of aliens granted H-1B status, Section 3.2 provides information on the number of employers requiring an additional ACWIA petition fee as reinstated by the H-1B Visa Reform Act and those exempt from the nonimmigrant H-1B ACWIA petition fee, while Section 3.3 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 2008 are presented.

III. Data Report

Section 3.1 – Number of H-1B petitions filed by employers in Fiscal Year 2008 and the number of H-1B petitions approved by the USCIS during this period.

Pursuant to section 214(c) of the INA, a U.S. employer using the H-1B program is 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.

Table 1 provides information on the number of H-1B petitions filed by employers in Fiscal Year 2008. 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.

A U.S. employer files 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 276,252 approved in Fiscal Year 2008, approximately 239,936 petitions were both filed and approved during Fiscal Year 2008. The remaining 36,316 petitions approved were filed in FY 2007.

**Table 1. Number of H-1B Petitions Filed and/or Approved
by Quarter: FY 2000-FY 2008**

	Fiscal Year	Oct to Dec	Jan to Mar	Apr to Jun	Jul to Sep	Total
Petitions Filed¹	2006	48,678	50,445	132,655	64,137	295,915
	2007	50,268	49,515	147,412	57,682	304,877
	2008	41,852	44,486	150,942	51,484	288,764
Petitions Approved²	2006	57,487	53,896	67,843	91,755	270,981
	2007	57,956	51,792	109,680	62,016	281,444
	2008	52,975	32,766	104,797	85,714	276,252

¹ About 63,000 H-1B petitions were filed but not receipted in April 2008 because they were not selected in the lottery. These FY 2008 petitions were excluded from this table.

² Regardless of when filed

Section 3.2 – Number of aliens provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p) (1) of the INA.

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 specifying which employers are exempt from the ACWIA fee by including additional types of exempt employers in addition to 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 no more 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 original 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 entities engaging in established curriculum-related clinical training of students registered at any such institution;
- ◆ Non-profit research organizations and Government research organizations;
- ◆ Primary or secondary education institutions;
- ◆ 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; or
- ◆ Filing a petition to correct a USCIS error.

Table 2 shows the number of petitions that were filed in Fiscal Year 2008 that required submission of the ACWIA fee as well as those petitions exempt from that fee. Table 3 shows the same information for all petitions approved during the same period regardless of when filed.

**Table 2. Number of H-1B Petitions Filed by Quarter
and Reason for ACWIA Fee or Exemption from Fee: FY 2008**

For Fiscal Year 2008	Oct 2007 to Dec 2007	Jan 2008 to Mar 2008	Apr 2008 to Jun 2008	Jul 2008 to Sep 2008	FY 2008
TOTAL PETITIONS FILED	41,852	44,486	150,942	51,484	288,764
Without any fee exemptions	22,104	23,667	124,121	29,715	199,607
With at least one exemption	19,748	20,819	26,821	21,769	89,157
REASONS FOR ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	4,742	4,589	35,200	6,325	50,856
Employer of at least 25 full-time equivalent employees	17,362	19,074	88,920	23,389	148,745
Number of full-time equivalent employees unknown	0	4	1	1	6
REASONS FOR EXEMPTION					
Employer is an institution of higher Education	5,434	5,888	9,117	7,143	27,582
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,804	4,034	8,043	4,914	19,795
Employer is a nonprofit research organization or a government research organization	1,605	1,927	2,280	2,025	7,837
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	11,130	11,200	10,854	9,527	42,711
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,661	1,137	1,126	1,560	5,484
Employer is filing a petition in order to correct a USCIS error	67	56	63	64	250
Employer is a primary or secondary education institution	938	1,448	3,217	2,511	8,114
Employer is a non-profit entity engaged in clinical training	2,213	2,987	5,324	3,015	13,539

**Table 3. Number of H-1B Petitions Approved
by Quarter and Reason of Exemption from ACWIA Fee: FY 2008**

For Fiscal Year 2008	Oct 2007 to Dec 2007	Jan 2008 to Mar 2008	Apr 2008 to Jun 2008	Jul 2008 to Sep 2008	FY 2008
TOTAL PETITIONS APPROVED	52,975	32,766	104,797	85,714	276,252
Without any fee exemptions	29,326	17,394	82,094	57,904	186,718
With at least one exemption	23,649	15,372	22,703	27,810	89,534
REASONS FOR ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	6,287	3,777	18,755	16,289	45,108
Employer of at least 25 full-time equivalent employees	23,039	13,617	63,337	41,615	141,608
Number of full-time equivalent employees unknown	0	0	2	0	2
REASONS FOR EXEMPTION					
Employer is an institution of higher Education	6,504	4,255	7,050	9,362	27,171
Employer is an organization or entity related to, or affiliated with an institution of higher education	3,861	2,792	5,758	6,995	19,406
Employer is a nonprofit research organization or a government research organization	1,901	1,452	1,952	2,377	7,682
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	13,142	7,794	10,465	12,508	43,909
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,841	1,285	1,043	1,551	5,720
Employer is filing a petition in order to correct a USCIS error	74	58	44	78	254
Employer is a primary or secondary education institution	1,618	929	2,053	3,362	7,962
Employer is a non-profit entity engaged in clinical training	2,858	2,017	4,117	4,324	13,316

Section 3.3 – Fraud prevention and detection fee pursuant to 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.

Table 4 shows the number of petitions that were filed in Fiscal Year 2008 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 2008

For Fiscal Year 2008	Oct 2007 to Dec 2007	Jan 2008 to Mar 2008	Apr 2008 to Jun 2008	Jul 2008 to Sep 2008	FY 2008
TOTAL PETITIONS FILED	18,909	19,649	120,346	22,644	181,548
REASONS FOR FRAUD FEE					
New employment (including new employer filing H1B extension)	7,808	8,877	107,899	11,026	135,610
New concurrent employment	261	226	275	304	1,066
Change of employer	10,840	10,546	12,172	11,314	44,872

Table 5. Number of H-1B Petitions Approved Requiring Fraud Prevention and Detection Fee: FY 2008

For Fiscal Year 2008:	Oct 2007 to Dec 2007	Jan 2008 to Mar 2008	Apr 2008 to Jun 2008	Jul 2008 to Sep 2008	FY 2008
TOTAL PETITIONS APPROVED	21,965	15,964	80,499	48,882	167,310
REASONS FOR FRAUD FEE					
New employment (including new employer filing H1B extension)	9,984	7,205	69,931	35,130	122,250
New concurrent employment	250	218	230	323	1,021
Change of employer	11,731	8,541	10,338	13,429	44,039