



Report on H-1B Petitions

Fiscal Year 2007, Annual Report
October 1, 2006 – September 30, 2007

May 1, 2009



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Foreword

I am pleased to present the following report, "Report on H-1B Petitions for Fiscal Year 2007" 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,



Charli 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 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 2007, October 1, 2006 – September 30, 2007. 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 2007 are presented.

The data contained in this report is accurate as of July 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:

- 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.

III. Data Report

Section 3.1 – Number of H-1B petitions filed by employers in Fiscal Year 2007 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 2007. 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 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 304,877 petitions filed in Fiscal Year 2007 and 281,444 approved in Fiscal Year 2007, approximately 239,307 petitions were both filed and approved during Fiscal Year 2007. The remaining 42,137 petitions approved were filed in prior fiscal years.

**Table 1. Number of H-1B Petitions Filed and/or Approved
by Quarter: FY 2002-FY 2007**

	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
	2005	41,020	41,847	98,831	84,776	266,474
	2006	48,678	50,445	132,655	64,137	295,915
	2007	50,268	49,515	147,412	57,682	304,877
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
	2005	58,141	60,614	71,200	77,176	267,131
	2006	57,487	53,896	67,843	91,755	270,981
	2007	57,956	51,792	109,680	62,016	281,444

NOTE---About 50,000 petitions were filed, but not receipted, in April 2007 due to their non-selection in the H-1B lottery. These receipts were excluded from the table.

*239,307 Petitions Received and Approved in FY 2007
42,137 Received prior to FY 2007 and Approved in FY 2007

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, 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 2007 that required submission of the ACWIA fee as well as those exempt from that fee. Table 5 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 Fee or Exemption from Fee: FY 2007

For Fiscal Year 2007	Oct 2006 to Dec 2006	Jan 2007 to Mar 2007	Apr 2007 to Jun 2007	Jul 2007 to Sep 2007	FY 2007
TOTAL PETITIONS FILED	50,268	49,515	147,412	57,682	304,877
Without any fee exemptions	26,550	24,271	117,674	31,857	200,352
With at least one exemption	23,718	25,244	29,738	25,825	104,525
REASONS FOR ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	5,994	5,405	34,264	6,575	52,238
Employer of at least 25 full-time equivalent employees	20,554	18,865	83,406	25,279	148,104
Number of full-time equivalent employees unknown	2	1	4	3	10
REASON FOR EXEMPTION					
Employer is an institution of higher Education.	5,587	5,994	8,894	7,794	28,269
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,804	3,771	7,123	5,112	18,810
Employer is a nonprofit research organization or a government research organization	1,572	1,862	2,222	2,060	7,716
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	15,130	15,849	14,568	12,958	58,505
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,759	1,386	1,389	1,747	6,281
Employer is filing a petition in order to correct a USCIS error	98	70	70	88	326
Employer is a primary or secondary education institution	1,120	1,314	2,791	2,689	7,914
Employer is a non-profit entity engaged in clinical training	2,261	2,806	5,080	3,399	13,546

**Table 3. Number of H-1B Petitions Approved
by Quarter and Reason of Exemption from Fee: FY 2007**

For Fiscal Year 2007	Oct 2006 to Dec 2006	Jan 2007 to Mar 2007	Apr 2007 to Jun 2007	Jul 2007 to Sep 2007	FY 2007
TOTAL PETITIONS APPROVED					
Without any fee exemptions	36,018	27,089	86,228	40,036	189,371
With at least one exemption	21,938	24,703	23,452	21,980	92,073
REASONS FOR ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	9,287	6,341	21,107	10,675	47,410
Employer of at least 25 full-time equivalent employees	26,730	20,748	65,121	29,361	141,960
Number of full-time equivalent employees unknown	1	0	0	0	1
REASON FOR EXEMPTION					
Employer is an institution of higher education.	5,775	5,667	6,634	7,155	25,231
Employer is an organization or entity related to, or affiliated with an institution of higher education	3,082	3,212	5,238	5,065	16,597
Employer is a nonprofit research organization or a government research organization	1,667	1,733	1,742	1,835	6,977
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	12,050	15,822	12,260	10,680	50,812
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	2,021	1,494	754	931	5,200
Employer is filing a petition in order to correct a USCIS error	111	77	39	59	286
Employer is a primary or secondary education institution	1,521	1,227	1,876	2,387	7,011
Employer is a non-profit entity engaged in clinical training	2,331	2,517	3,750	3,349	11,947

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 2007 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

For Fiscal Year 2007	Oct 2006 to Dec 2006	Jan 2007 to Mar 2007	Apr 2007 to Jun 2007	Jul 2007 to Sep 2007	FY 2007
TOTAL PETITIONS FILED	19,756	20,173	114,643	24,773	179,345
REASONS FOR FRAUD FEE					
New employment (including new employer filing H1B extension)	8,229	8,455	101,022	11,561	129,267
New concurrent employment	305	281	297	311	1,194
Change of employer	11,222	11,437	13,324	12,901	48,884

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

For Fiscal Year 2007:	Oct 2006 to Dec 2006	Jan 2007 to Mar 2007	Apr 2007 to Jun 2007	Jul 2007 to Sep 2007	FY 2007
TOTAL PETITIONS APPROVED	31,762	21,367	79,495	35,763	168,387
REASONS FOR FRAUD FEE					
New employment (including new employer filing H1B extension)	21,935	10,112	69,226	25,187	126,460
New concurrent employment	248	294	221	213	976
Change of employer	9,579	10,961	10,048	10,363	40,951