

Report on H-1B Petitions Third Quarter Fiscal Year 2001

April 1, 2001 – June 30, 2001



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U. S. Immigration and Naturalization Service

Report Mandated by Public Law 105-277, Division C,
American Competitiveness and Workforce Improvement Act of 1998

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) 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 Immigration and Naturalization Service (INS) concerning the H-1B fee, fee exemption, and demographic H-1B worker data.

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, Congress raised the H-1B petitioner fee from \$500 to \$1,000 and exempted additional employers from payment of this fee. The AC-21 temporarily raises the H-1B cap to 195,000 for fiscal years 2001 through 2003 while exempting certain H-1B workers from these numerical limits.

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)."

This report presents information on the third quarter of fiscal year 2001 and updates data reported for the first and second quarters.

This report is presented in two parts: Part I provides information on the number of aliens granted H-1B status while Part II presents information on the number of employers exempt from the nonimmigrant H-1B petition fee.

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 the first, second, and third quarters of fiscal year 2001. This table also provides information on the number of H-1B petitions approved by the INS during this period. Petitions filed in a particular quarter may not be adjudicated in that same quarter.

U.S. employers file the petition with the INS 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 petitions to sponsor the same alien. 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 INS 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.

Approximately 202,000 petitions were both filed and approved during the first three quarters of fiscal year 2001. The remaining 52,000 petitions approved through June 30 in fiscal year 2001 were filed in prior fiscal years.

Table 1. Number of H-1B Petitions Filed and/or Approved in Fiscal Year 2001 as of June 30, 2001

For Fiscal Year 2001:	Oct 00 to Dec 00	Jan 01 to Mar 01	Apr 01 to Jun 01	Oct 00 to Jun 01
Petitions filed	128,758	75,396	65,952	270,106
Petitions approved	57,961	114,055	82,656	254,672

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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 fee, effective December 1, 1998, and, as amended, authorized until September 30, 2003, was increased from \$500 to \$1,000 with passage of Public Law 106-311. The increased fee was effective on December 18, 2000.

Public Law 106-311 amended section 214(c)(9)(A) of the INA to specify which employers are exempt from the fee, including those employers described under section 212(p)(1) of the Act. Due to that legislative amendment, this report exceeds the reporting mandate: it covers all employers exempt from the fee, not only those described in 212(p). Additionally, the INS 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 an INS 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 the first, second and third quarters of fiscal year 2001 and the number exempted from the fee. The relatively high number of petitions filed in the first quarter may be attributed at least partly to employers' efforts to beat the fee increase effective on December 18, 2000. Table 3 shows the same information for all petitions approved during the same period. 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 in Fiscal Year 2001 by Quarter and Reason of Exemption from Fee as of June 30, 2001

For Fiscal Year 2001:	Oct 00 to Dec 00	Jan 01 to Mar 01	Apr 01 to Jun 01	Oct 00 to Jun 01
TOTAL PETITIONS FILED*	128,758	75,396	65,952	270,106
Without any fee exemptions	119,493	66,778	54,476	240,747
With at least one exemption	9,224	8,606	11,446	29,276
Exemption data unavailable	41	12	32	85
REASON FOR EXEMPTION				
Employer is an institution of higher education	4,056	3,301	5,089	12,446
Employer is an organization or entity related to, or affiliated with, an institution of higher education	1,895	1,924	2,428	6,247
Employer is a nonprofit research organization or a government research organization	1,279	1,322	1,506	4,107
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	1,806	2,037	2,646	6,489
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,919	1,297	1,515	4,731
Employer is filing a petition in order to correct an INS error	86	83	99	268
Employer is a primary or secondary education institution	342	713	1,253	2,308
Employer is a non-profit entity engaged in clinical training	320	628	1,471	2,419

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* Total petitions filed in the third quarter is two less than the sum of the three sub-categories because two petitions filed had at least one fee exemption **and** unavailable exemption data.

Table 3. Number of H-1B Petitions Approved in Fiscal Year 2001 by Quarter and Reason of Exemption from Fee as of June 30, 2001

For Fiscal Year 2001:	Oct 00 to Dec 00	Jan 01 to Mar 01	Apr 01 to Jun 01	Oct 00 to Jun 01
TOTAL PETITIONS APPROVED	57,961	114,055	82,656	254,672
Without any fee exemptions	52,212	105,236	73,100	230,548
With at least one exemption	5,736	8,812	9,551	24,099
Exemption data unavailable	13	7	5	25
REASON FOR EXEMPTION				
Employer is an institution of higher education	2,942	4,039	3,968	10,949
Employer is an organization or entity related to, or affiliated with, an institution of higher education	1,162	1,665	2,198	5,025
Employer is a nonprofit research organization or a government research organization	880	1,316	1,461	3,657
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	1,006	1,681	2,101	4,788
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,068	1,769	1,485	4,322
Employer is filing a petition in order to correct an INS error	40	71	72	183
Employer is a primary or secondary education institution	150	363	736	1,249
Employer is a non-profit entity engaged in clinical training	146	327	934	1,407

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