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The H-1B Cap Is Filling Up Very Quickly
(and I'm going to lose the office pool)

USCIS posted [current cap counts](#) on May 12, 2006 and again on May 16, 2006. On May 12, 34,808 of the 65,000 available [H-1B numbers](#) for fiscal year 2007 had been used. On May 16, 39,445 numbers had been used. That is nearly 5,000 new H-1B cases over 4 days, and May 13-14 was a weekend. So actually, almost 5,000 H-1B numbers were used up in two business days. At this rate, the cap could be reached by the end of May. Anyone who wishes to file an H-1B petition for an October 1, 2006 start date should do so *immediately*.

Department of State Issues Additional Helpful Guidance on
Issuance of Student Visas

The Department of State has been issuing a series of cables to guide Consular Officers in issuance of F-1 student visas for what is anticipated to be a busy F-1 application season this fall. As [previously reported](#), the Department issued a cable changing the earliest issuance and admission dates for F, M, and J visas to 120 days before the program start date listed on their I-20s.

Most recently, the Department of State issued a [cable](#) in May 2006 stating that for students whose visa issuance is likely to be delayed due to security clearances, consular posts may accept applications for adjudication and processing even before the 120 period prior to the program start date listed in their I-20s. However, visas may not actually be issued until 120 days before the start of studies.

Also [previously reported](#) in Immigration Newswire, the Department of State issued a cable providing guidance on determining whether or not F-1 visa applicants have immigrant intent.

Department of State Comments on Movement of Immigrant Visa Numbers

Employment-based visa numbers for the "worldwide" category are current for all preference categories except Third Preference ("EB3"). (Employment Based First and Second Preference numbers are still retrogressed for India and China). At a March 23, 2006 meeting with the American Immigration Lawyers Association, the Department of State said that demand for EB3 visa numbers in March was expected to exceed the total for the previous three months combined, and that further retrogression could not be ruled out. However, the [June 2006 Visa Bulletin](#) shows that the EB3 worldwide priority date has moved forward from May 2001 to July 2001. It is uncertain whether there will be further retrogression of EB3 numbers this fiscal year. The new fiscal year will begin on October 1, 2006.

Visa numbers in the EB3 "Other Worker" category have become "Unavailable" and will remain so for the rest of the Fiscal Year, until October 1, 2006.

The June 2006 Visa Bulletin also shows that the Family Based "2A" preference category, for spouses and children of permanent residents, will retrogress in June. The Visa Bulletin states, "it has been necessary to retrogress the F2A cut-off date for all chargeability areas except Mexico. This has been done in an effort to hold the issuance levels within the applicable annual numerical limits for the affected categories. Further retrogression of the F2A category cut-off date is likely for July."

For more information about how to read the Visa Bulletin, see our article entitled, ["Immigrant Visa Preference Categories Explained."](#)

Department of State Clarifies that 2-Year Foreign Residency Requirement Does Not Apply to a Change of Status to E-3

J-1 visas are issued to participants in the exchange visitor program. The Department of State maintains [Skills Lists](#). Each country has a Skills List setting out the professions for which there are national shortages of skilled workers. If a J-1 exchange visitor enters the U.S. for study, training, or participation in a profession listed on his or her home country's Skills List, he or she will be subject to a 2-year foreign residency requirement following conclusion of the J-1 program for which he enters the U.S. J-1 visa holders must either complete the 2-year foreign residency requirement prior to applying for permanent residence or changing status to H-1B or L-1, or else obtain a waiver of the residency requirement.

The new [E-3 visa category](#) for Australian nationals is very similar to H-1B status except that it applies only to nationals of Australia as well as their spouses and children. The E-3 principal nonimmigrant must be coming to the United States solely to perform services in a specialty occupation. Unlike H-1B status, no petition needs to be filed with USCIS prior to issuance of an E-3 visa by an Australian Consulate. Also unlike H-1B status, the E-3 category does not specifically provide the visa holder with "[dual intent](#)." In addition, the Department of State has clarified in an Advisory Opinion that INA 212(e) does not bar a J-1 nonimmigrant who is subject to the two-year foreign residency requirement from changing status to E-3. However, upon conclusion of a stay in E-3 status, those aliens subject to the 2-year foreign residency requirement will either have to leave the U.S. for 2 years, or else have a waiver of the 2-year foreign residency requirement in place at that time.

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