

Report on H-1B Petitions

Fiscal Year 2009 Annual Report
October 1, 2008 – September 30, 2009

July 2010



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U.S. Citizenship and Immigration Services

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Foreword

I am pleased to present the following "Report on H-1B Petitions for Fiscal Year 2009" prepared by U.S. Citizenship and Immigration Services. The report was compiled in response to a legislative requirement accompanying the American Competitiveness and Workforce Improvement Act of 1998 (Public Law 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

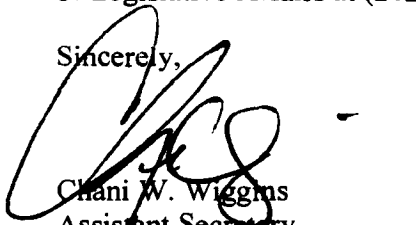
The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee

The Honorable John Conyers, Jr.
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,



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 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 2009, October 1, 2008 – September 30, 2009. The report provides information on: the number of aliens granted H-1B status; 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 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 2009 are presented.

The data contained in this report are accurate as of January 13, 2010.

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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 General¹ 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).”

¹ As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. See 6 U.S.C. § 557 (2003) (codifying HSA, Title XV, § 1517).

II. Background

The Immigration Act of 1990 established numerical limitations on the H-1B nonimmigrant classification to provide U.S. employers access to foreign skilled workers while ensuring worker protections. The numerical cap of 65,000 H-1B visas 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). 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 “ACWIA 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, ACWIA imposed quarterly and annual reporting requirements on U.S. Citizenship and Immigration Services (USCIS) concerning the H-1B fee, fee exemption, and demographic H-1B worker data. The ACWIA fee of \$500 was initially scheduled to sunset on October 1, 2001.

The 106th Congress passed two bills that affected 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 of 2000 (AC-21).

First, pursuant to Public Law 106-311, Congress raised the ACWIA fee from \$500 to \$1,000 while exempting additional types of employers beyond those described in INA § 212(p)(1) from payment of this fee and extending the applicability of the fee provision to qualifying petitions 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. The H-1B Visa Reform Act again exempted certain types of employers from payment of the fee altogether,² and also lowered the fee to \$750 for employers who have no more than 25 full-time equivalent employees in the United States (determined by including the number of employees employed by any affiliate or subsidiary of such employer). This fee applies to any initial H-1B petition or first-

² See Section 3.2 of this report for further information about organizations that are exempt from the ACWIA fee.

time extension filed with USCIS after December 8, 2004, unless the petitioning organization is exempt from the fee. Second, the H-1B Visa Reform Act instituted a new Fraud Prevention and Detection Fee (Fraud Fee) of \$500 that must be submitted with a petition 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 Fraud 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. The Fraud Fee applies to qualifying petitions filed with USCIS on or after March 8, 2005. Finally, the H-1B Visa Reform Act provided that the first 20,000 petitions filed on behalf of aliens who had earned a master's degree or higher from a U.S. secondary education institution would be exempt from the cap.

This report covers the four quarters of Fiscal Year 2009. 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; and Section 3.3 provides information on the number of employers required to submit the Fraud Fee. In all parts of this report, quarterly and annual data for Fiscal Year 2009 are presented.

III. Data Report

Section 3.1 – Number of H-1B petitions filed by employers in Fiscal Year 2009 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 Secretary of Homeland Security 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 2009. This table also provides information on the number of H-1B petitions approved by 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; however, for H-1B cap purposes such an alien will only be counted once. Additionally, an employer may file a petition to sponsor an alien who currently has status as an H-1B nonimmigrant working for another employer or to amend a previously approved petition. In the case of a petition to amend a previously approved petition, no corresponding request need be made to extend the authorized stay of the beneficiary. For example, an employer may file an amended petition notifying 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 214,271 petitions approved in Fiscal Year 2009, approximately 191,712 were both filed and approved during Fiscal Year 2009. The remaining 22,559 were filed prior to Fiscal Year 2009.

**Table 1. Number of H-1B Petitions Filed and/or Approved
by Quarter: FY 2007-FY 2009**

	Fiscal Year	Oct to Dec	Jan to Mar	Apr to Jun	Jul to Sep	Total
Petitions Filed³	2007	50,268	49,515	147,412	57,682	304,877
	2008	41,852	44,486	150,942	51,484	288,764
	2009	36,669	37,291	121,782	50,905	246,647
Petitions Approved⁴	2007	57,956	51,792	109,680	62,016	281,444
	2008	52,975	32,766	104,797	85,714	276,252
	2009	35,812	36,883	69,699	71,877	214,271

³ Approximately 63,000 H-1B petitions were submitted but not filed (i.e., the petition and fee were not accepted) in April 2008 because they were not selected in the lottery. These Fiscal Year 2008 petitions were excluded from this table.

⁴ These figures account for all approved petitions during the respective fiscal year, regardless of whether the petition was filed in the same or in a previous fiscal year. To illustrate, 191,712 petitions were both received and approved in Fiscal Year 2009, whereas 22,559 petitions were received prior to Fiscal Year 2009, but were approved in Fiscal Year 2009.

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 initially filing a petition to grant an alien status as H-1B; extend the nonimmigrant stay of an alien as an H-1B (unless the employer previously has obtained an extension for such alien); or 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 scheduled to sunset on September 30, 2001.

With the passage of Public Law 106-311, the fee was increased from \$500 to \$1,000, effective December 18, 2000, with a sunset on September 30, 2003. Public Law 106-311 also amended section 214(c)(9)(A) of the INA by specifying certain employers that are exempt from the ACWIA fee beyond 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 filed with USCIS after December 8, 2004; however, employers who have no more than 25 full-time equivalent employees who are employed in the United States⁵ only must pay a \$750 ACWIA fee. The H-1B Visa Reform Act again exempted employers described in section 214(c)(9)(A) of the INA from the ACWIA fee. Additionally, section 214(c)(9)(A) exempts payment of the ACWIA fee in certain administrative instances, as summarized below.

Due to the passage of Public Law 106-311, this report exceeds the original reporting mandate: it covers all employers exempt from the fee as described in section 214(c)(9)(A), not only those described in section 212(p). Specifically, 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;

⁵The number of employees who are employed in the U.S. includes the number of employees employed by any affiliate or subsidiary of such employer.

- ◆ 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 2009 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 2009**

For Fiscal Year 2009	Oct 2008 to Dec 2008	Jan 2009 to Mar 2009	Apr 2009 to Jun 2009	Jul 2009 to Sep 2009	FY 2009
TOTAL PETITIONS FILED	36,669	37,291	121,782	50,905	246,647
Without any fee exemptions	20,828	19,309	97,266	33,032	170,435
With at least one exemption	15,841	17,982	24,516	17,873	76,212
REASONS FOR ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	4,487	4,309	27,710	7,674	44,180
Employer of at least 25 full-time equivalent employees	16,314	14,983	69,555	25,357	126,209
Number of full-time equivalent employees unknown	27	17	1	1	46
REASONS FOR EXEMPTION					
Employer is an institution of higher education	4,882	5,557	8,277	5,845	24,561
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,819	3,663	7,125	3,478	17,085
Employer is a non-profit research organization or a government research organization	1,560	1,677	2,096	1,653	6,986
Employer is filing a second (or subsequent) extension of stay for an H-1B nonimmigrant	7,651	9,005	9,404	8,236	34,296
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,770	1,393	1,274	1,230	5,667
Employer is filing a petition in order to correct a USCIS error	67	64	56	48	235
Employer is a primary or secondary education institution	938	1,042	3,269	1,964	7,213
Employer is a non-profit entity engaged in clinical training	2,104	2,743	5,021	2,598	12,466

**Table 3. Number of H-1B Petitions Approved
by Quarter and Reason of Exemption from ACWIA Fee: FY 2009**

For Fiscal Year 2009	Oct 2008 to Dec 2008	Jan 2009 to Mar 2009	Apr 2009 to Jun 2009	Jul 2009 to Sep 2009	FY 2009
TOTAL PETITIONS APPROVED	35,812	36,883	69,699	71,877	214,271
Without any fee exemptions	20,431	19,876	54,940	48,379	143,626
With at least one exemption	15,381	17,007	14,759	23,498	70,645
REASONS FOR ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	4,886	4,026	12,973	12,266	34,151
Employer of at least 25 full-time equivalent employees	15,543	15,826	41,965	36,111	109,448
Number of full-time equivalent employees unknown	2	21	2	2	27
REASONS FOR EXEMPTION					
Employer is an institution of higher education	5,407	4,941	5,174	8,128	23,650
Employer is an organization or entity related to, or affiliated with an institution of higher education	3,022	3,097	4,475	5,447	16,041
Employer is a non-profit research organization or a government research organization	1,539	1,599	1,363	2,053	6,554
Employer is filing a second (or subsequent) extension of stay for an H-1B nonimmigrant	6,924	8,727	5,270	10,419	31,340
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,293	1,675	684	1,487	5,139
Employer is filing a petition in order to correct a USCIS error	36	73	27	58	194
Employer is a primary or secondary education institution	1,255	933	1,574	2,687	6,449
Employer is a non-profit entity engaged in clinical training	2,298	2,351	3,403	3,846	11,898

Section 3.3 – Fraud Prevention and Detection Fee pursuant to the H-1B Visa Reform Act of 2004.

The H-1B Visa Reform Act of 2004 also imposed an additional fee of \$500 (“Fraud Prevention and Detection Fee” or “Fraud 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 filed in Fiscal Year 2009 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 2009

For Fiscal Year 2009	Oct 2008 to Dec 2008	Jan 2009 to Mar 2009	Apr 2009 to Jun 2009	Jul 2009 to Sep 2009	FY 2009
TOTAL PETITIONS FILED	16,885	15,657	92,136	23,565	148,243
REASONS FOR FRAUD FEE					
New employment (including new employer filing H-1B extension)	7,191	7,090	83,575	17,026	114,882
New concurrent employment	211	221	265	223	920
Change of employer	9,483	8,346	8,296	6,316	32,441

**Table 5. Number of H-1B Petitions Approved Requiring
Fraud Prevention and Detection Fee: FY 2009**

For Fiscal Year 2009:	Oct 2008 to Dec 2008	Jan 2009 to Mar 2009	Apr 2009 to Jun 2009	Jul 2009 to Sep 2009	FY 2009
TOTAL PETITIONS APPROVED	16,787	14,830	55,355	37,855	124,827
REASONS FOR FRAUD FEE					
New employment (including new employer filing H-1B extension)	8,503	6,547	49,579	30,011	94,640
New concurrent employment	223	233	151	272	879
Change of employer	8,061	8,050	5,625	7,572	29,308