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When do I become exempt from H-1 quota

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Submitted by Chief Editor on Feb 17th 2015

I got my H-1B petition approved in 2008 and again got it extended in 2008 unto Jan 2011. Now, I have never used both these visa's to work in US. Though, I have traveled few times to US but on B-1 visa for meetings with customer. Today, one of my friend told me that I am eligible for cap exempt H-1B application if I get job in US. Also, what will be the processing time for this cap exempt H-1B. Can this be done in premium processing in 15 days ?

ANSWER:

See clip from Attorney Rajiv S. Khanna's conference call video that addresses this question.

https://www.youtube.com/watch?v=xv_vl7O0d4U#t=51&2

FAQ Transcript:

It is a very odd situation. I think the USCIS interpretation of when you become exempt from the quota is incorrect. But this is their current thinking at least as of last week. With them you never know. They felt if you are outside USA and you get an H-1B approval never go for visa stamping. You are not exempt from the quota. So if you never get visa stamped we don't consider you to be exempt. If you're in the United States and you get your H-1 approval but the employer who got the approval revokes your H-1 before October 1st you are not exempt from the quota. I think both the interpretations are incorrect. I would encourage you to try and take a chance and see if you can consider being quota exempt. Anyway if I were you I would certainly file a quota application in April just to preserve all my rights and if it does not get selected in the lottery file again and ask for quota exemption because of the reason that you have an H-1 from before.

Nonimmigrant Visas:

[Quota](#) ^[3]

[H Visa](#) ^[4]

[H-1 Visa](#) ^[5]

Unless the context shows otherwise, all answers here were provided by [Rajiv](#) ^[6] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) ^[7]

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