



# WHY WE SHOULD ALL BE MAD ABOUT THE H-1B VISA CAP

*Posted on April 11, 2014 by Cyrus Mehta*

The [USCIS announced](#) today, April 9, 2014, that it had received 172,500 H-1B visa petitions for the 65,000 H-1B regular cap and the 20,000 additional cap for graduates with advanced degrees from US universities. This is much more than the 124,000 H-1B visa petitions the USCIS received in 2014. The H-1B cap makes no sense, and here are 10 good reasons why we should all really be more upset about it this year for the simple reason is that we face the cap each year, and nothing ever changes. Enough is enough!

The first reason to be mad about the H-1B cap is that it forces employers to scramble way before the start of the 2015 fiscal year, which is October 1, to file for H-1B visas, only to get rejected by a randomized lottery. This is no way to treat US employers who pay thousands of dollars in legal and filing fees, along with all the steps they need to take in being in compliance. The whole concept of a nonsensical quota reminds us of Soviet era central planning, and then to inject a casino style of lottery into the process, just rubs salt into an oozing old wound.

Second, one can only feel for all the foreign national prospective employees, who all need to qualify to work in a specialty occupation, as defined under the H-1B visa law. Out of the 172,500 H-1B cases received, 87,500 people will get rejected. That is 87,500 hopes and dreams dashed. Many who are in the United States after graduating from American universities may have to leave. Others won't be able to set foot into the United States to take up their prized job offers.

Third, imagine if all of these 87,500 who will be rejected could actually come and work in the United States. Their employers would benefit and become more globally competitive - and could have less reason to outsource work to

other countries. They would have also been productive workers, and spent money in the US economy, including buying houses and paying taxes. The H-1B cap has robbed the economy of this wonderful cascading effect.

Fourth, the USCIS has taken pains to encourage entrepreneurs to establish startups in the United States because of the potential of creating new technologies resulting in more jobs, and keeping the country competitive. The [entrepreneur portal](#) encourages entrepreneurs to use the H-1B visa to sponsor themselves through their own startups. What a pity to lose out on that entrepreneur who could create the next Google or Tesla electric car.

Fifth, immigration attorneys and their staff who toiled away hard for the past few weeks will feel really bad for their clients, and also for themselves that their labor will not come into fruition.

Sixth, people who have lost the lottery will try to come to the United States under other options, which are much harder. They may also resort more to the B-1 business visa, and although the business visa is ambiguous enough to cover activities that go beyond a business meeting, many will fall afoul of the visa wittingly or unwittingly. Using the B-1 visa when the H-1B visa is not available is like engaging in risky unprotected sex. People will get into trouble at some point in time and the party will be over.

Seventh, the [White House very recently announced](#) that it would allow a limited number of spouses on H-4 visas the ability to work. The whole purpose is to encourage highly skilled people to work in the United States on H-1B visas. What is the purpose of such an announcement when the cap eliminates the ability of people to enter the United States on H-1B visas in the first place. It all feels like a joke, rather like flatulence, on this day when it was announced that 172,500 people applied for a meager 85,000 visas.

Eight, even the lucky ones who have gotten selected are by no means guaranteed that their H-1B cases will get approved. The USCIS applies rigidly impossible standards, and also reviews the cases unevenly, the California Service Center being far more cruel than the Vermont Service Center. And even those whose H-1B visa petitions get approved may not be issued visas at the US Consulates overseas, especially consuls in India who use the visa process as a trade barrier to curb the flow of Indian IT professionals from making it to the United States. Then, those who finally make it will also likely get subjected to oppressive green card quotas down the road.

Ninth, one should also really be incensed at Congress for not doing anything about the 65,000 cap since 2003.

Tenth and lastly, even when Congress does get into the act of doing something, it may make things worse rather than better. The H-1B proposals in the Senate bill, S. 744, make the H-1B visa far more difficult to use and have an outer limit of 180,000. In other words, Congress may not be capable of fixing the problem.

**Postscript:** I am actually an optimist, but the only way we can bring about positive change to the H-1B visa cap problem, is to collectively get mad about it!