

Fiscal Year 2022 H-1B Lottery Update

Alert

02.08.2021

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Registration Dates Announced and Rule Prioritizing Selection of Highest Wage-Level Delayed

On February 5, 2021, U.S. Citizenship and Immigration Services (USCIS) [announced](#) that the initial registration period for the fiscal year 2022 H-1B lottery will open on March 9, 2021 at noon EST and close on March 25, 2021 at noon EST. Late registrations will not be accepted. During this short window, employers wishing to file an H-1B petition for a cap-subject foreign national professional for an October 1 start date must submit an online electronic registration with USCIS. The governmental filing fee is \$10 per beneficiary.

There are only 85,000 total H-1B numbers available in each annual lottery for foreign professionals in specialty occupations. This includes 65,000 under the “Regular Cap” plus an additional 20,000 under the “Master’s Cap,” reserved for beneficiaries holding U.S. advanced degrees. The demand for H-1B cap numbers typically substantially exceeds the supply. For example, USCIS received approximately 275,000 H-1B registrations last year.

After the registration window closes on March 25, USCIS will conduct a random lottery and will notify registration lottery winners by March 31. Once notified, employers will have 90 days to file H-1B petitions with USCIS for beneficiaries selected in the H-1B cap lottery.

Is this relevant for my company? Likely, yes. This is relevant to any non-exempt U.S. employer who would like to sponsor a professional foreign national professional who has never held H-1B status. Institutions of higher education are an example of an employer who is exempt from the cap and may submit H-1B petitions throughout the year without regard to the cap and are not required to submit electronic registrations.

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What action should I take? We recommend that interested employers review their rosters of foreign national employees to identify:

- Employees in F-1 (student) status employed pursuant to CPT, OPT, or STEM OPT work authorization.
- Employees holding nonimmigrant status (J-1, H-4 EAD, L-2 EAD, O, TN, etc.) expiring before October 1, 2022.
- Prospective/former foreign national professional employees the employer would like to hire/rehire.

We recommend interested employers, and especially employers considering sponsoring F-1 students, participate in this year's lottery because the rules regarding selection and wage criterion will likely change next year.

Earlier this year, USCIS published final rule intended to replace the current random selection process by which USCIS selects H-1B registrations with a wage-based system. The new system will select registrations based on the highest prevailing wage level for the occupational classification, which likely will disadvantage recent graduates entering the labor market with entry level salaries. The new rule was scheduled to take effect on March 9, 2021, but was delayed to December 31, 2021 to allow the agency more time to implement the modified process and prepare stakeholders for the change.

We recommend working with your Stinson immigration attorney to gather support documentation, as advanced preparation can reduce risk and delays during the registration filing period.

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