

H-1B Lottery Information Released for Fiscal Year 2024

On January 30, 2024, the United States Citizenship and Immigration Services (“USCIS”) published initial information regarding the Fiscal Year 2024 H-1B Visa process.

The H-1B Visa is an employment-based, nonimmigrant (temporary) classification applicable to foreign nationals who wish to perform services in a specialty occupation, services of exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project, or services as a fashion model of distinguished merit or ability.

There is a limited number of H-1Bs available each fiscal year. This limit is commonly referred to as the “H-1B cap” or “cap.” The cap is applicable to most employers, with the exception of universities and related nonprofit entities, nonprofit research organizations and government research organizations, which are categorized as “cap exempt” who can apply at any time during the year. For H-1B cap visas, the lottery season is the only chance to seek selection and apply for a H-1B cap visa, so time is of the essence. For each fiscal year, there are 65,000 congressionally mandated cap-subject H-1B visas available. These 65,000 H-1Bs are designated for foreign nationals with a bachelor’s degree (or equivalent education) from a United States (“US”) or foreign college or university. An additional 20,000 H-1Bs are designated for foreign nationals with a graduate degree from a US college or university and are exempt from the cap. In FY 2024, USCIS received 758,994 H-1B registrations total – a 60% increase from FY 2023.

Each year, USCIS holds an open registration period for the H-1B cap. An H-1B cap-subject petition, including a petition for a beneficiary who is eligible for the advanced degree exemption, may only be filed by a petitioner employer whose registration for the beneficiary named in the H-1B petition was selected in the H-1B lottery. The cost to submit a registrant to the lottery is \$10 per beneficiary. This year, the important dates are as follows:

- **March 6, 2024**
 - The registration period, during which representatives and petitioner employers can enter beneficiary information and submit their information for the lottery, opens at noon eastern standard time on Wednesday, **March 6, 2024**.
 - The registration fee will remain \$10 per registration for FY 2025.
- **March 22, 2024**
 - The registration period will remain open through noon eastern standard time on **March 22, 2024**. During this period, prospective petitioners and representatives will be able to complete and submit their registrations using the online H-1B registration system.
 - If USCIS receives enough applicants by **March 22, 2024**, it will close the lottery, randomly select registrations, and send selection notifications via myUSCIS online accounts and email notifications.
 - In the unlikely event that USCIS does not receive enough registrations by **March 22, 2024**, all registrations that were properly submitted in the initial registration period will be selected.

Based on prior practice, USCIS will then likely notify all account holders regarding selection by the end of March.

Successful registrations may submit their petitions from the spring to the summer of 2024, with the exact dates still to be defined. Generally, H-1B cap petitions can be submitted April 1st through June 30th each year. H-1B status becomes active as early as October 1st each year. USCIS has indicated that additional information will be provided before the start of the initial H-1B registration period.

Also of note this year, is a new H-1B Registration Final Rule, which contains provisions designed to make the selection process more beneficiary-centric and also details increases to filing fees. Under this new system, registrations will be selected by unique beneficiary rather than by registration. The goal is to reduce the potential for fraud and ensure each beneficiary would have the same chance of being selected, regardless of the number of registrations submitted on their behalf by an employer. Starting with the FY 2025 initial registration period, USCIS will now require registrants to provide valid passport information or valid travel document information for each beneficiary. The passport (or in some cases, travel document) provided must be the one the beneficiary, if or when abroad, intends to use to enter the United States if issued an H-1B visa. Each beneficiary must only be registered under one passport or travel document.

As noted, under this Final Rule, USCIS announced that filing fees for H-1B petitions will increase. These new filing fee increases are outlined below and are effective April 1, 2024. Nonprofits and small employers (defined as 25 or fewer full-time employees) filing Form I-129 will pay a fee discounted up to 50%.

- **Standard Processing:**
 - The current filing fee of \$460 will increase to \$1,015 on April 1, 2024.
- **Premium Processing**
 - The current Premium Processing fee, which guarantees adjudication within 15 calendar days will increase from \$2,500 to \$2,805 and will shift to a timeline of 15 business days. This is in addition to the standard filing fee.

With these dates on the horizon and new standards to consider, clients should work to identify possible registrants and finalize such prospective or current employee registrants before March 1, 2024. Dependent on the client, the pool of possible registrants may be best narrowed by academic credentials, specifically the completion of a bachelor's or master's degree. It is also common for foreign national students studying in the US to transition from Optional Practical Training ("OPT") authorization (F-1 status) to H-1B status by way of lottery selection. It is prudent to review the immigration status of current employees, interns, or prospective employees whose current immigration status may be expiring within the next year, in order to consider longer term employment options and other transitions made possible with an H-1B visa.

Eckert Seamans represents publicly traded companies, privately held corporations, nonprofit organizations, small businesses, municipalities, and individuals in immigration matters. Derek Illar and Allison Bustin are prepared to assist clients in navigating the H-1B lottery and the overall H-1B application processes.