

FY2022 H-1B Cap Lottery Registration

On Friday, February 5, 2021, U.S. Citizenship and Immigration Services (USCIS) announced that the initial registration period for the FY2022 H-1B Cap Lottery will begin on March 9, 2021. The initial registration will open at noon Eastern Standard Time (EST) on March 9, 2021, and run through noon (EST) on March 25, 2021. Both attorney representatives and registrants must wait until March 9, 2021, to create and complete H-1B registrations through USCIS's H-1B Registration.

In 2020, USCIS first introduced an electronic registration process for the H-1B cap cases. The electronics system required prospective petitioners seeking to file H-1B cap-subject petitions to first electronically register and then pay the associated \$10 H-1B registration fee for each beneficiary. The electronic registration process has streamlined processing by reducing paperwork and data exchange, and has provided overall cost savings to employers seeking to file H-1B cap-subject petitions. Similar to last year, USCIS will open the initial registration period for 14 calendar days. The H-1B random selection process will then be run on properly submitted electronic registrations. Only those with selected registrations will be eligible to file H-1B cap-subject petitions.

As it did in 2020, USCIS will run the random selection process from the electronic registrations and determine which registrants will be eligible to file H-1B cap-subject petitions for the 65,000 available slots. USCIS will then select an additional 20,000 registrants reserved for those with an advanced degree from a U.S. college or university. Once selected in the random lottery, eligible registrants will then complete H-1B cap-subject petitions with all supporting documents to USCIS.

As the demand for cap-subject H-1B visas has far exceeded the 85,000 visas available per fiscal year, we anticipate that USCIS will once again receive more registrations than there are available visas.

We urge employers to assess their hiring needs to determine which candidates will require H-1B sponsorship. These might include F-1 students on OPT, J-1 workers not subject to the two-year foreign residency requirement, TN, E-2, and L-1 workers, as well as any foreign nationals who currently reside outside the United States. In order to assess whether to file an H-1B registration in March, we will need to analyze the employer, the position, and the beneficiary to confirm that the applicant is eligible for an H-1B visa.

Remember, the H-1B lottery only relates to cap-subject H-1B petitions. The H-1B lottery does not relate to current H-1B workers who are extending or amending their visas or changing employers (unless the current H-1B worker is working for a cap-exempt employer). The lottery would also not apply to a foreign national working for a cap exempt employer (an institution of higher education, a related or affiliated nonprofit entity, a nonprofit research organization, or a government research organization).

In other news, the Department of Homeland Security (DHS) announced on Thursday the proposed H-1B selection final rule based upon wage levels would be delayed. DHS indicated the delay results from the need for more time to develop, test, and implement the modifications to the H-1B registration system and selection process. This delay extends the effective date of this final rule from March 9, 2021, to December 31, 2021. DHS believes the delay will provide more time for USCIS to train staff and perform public outreach as well as give stakeholders time to adjust to the new rule. Therefore, for the FY2022 Cap cases, USCIS will apply the current regulations (random selection) to any registration period that takes place before December 31, 2021.



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