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Immigration Alert: H-1B Visa Lottery (Fiscal Year 2020): Important Changes to the Application Process

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This year, new regulations were enacted to amend the H-1B lottery process. DHS anticipates that the new procedures will result in granting more H-1B visas to beneficiaries with advanced degrees (U.S. master's degree or higher), thus rewarding the "most-skilled and highest-paid" in support of the Buy American and Hire American Executive Order.

At the beginning of each government fiscal year, which starts October 1, the U.S. Citizenship and Immigration Services (USCIS) makes available an allocation of new H-1B visas. In general, the H-1B visa classification permits a foreign national to work in the United States for a temporary period in a "specialty occupation."

H-1B visas are numerically limited, commonly referred to as the H-1B "cap," with a total of 65,000 new visas available each fiscal year (6,800 of these H-1Bs are reserved for citizens of Singapore and Chile based on Free Trade Agreements with these countries). In addition, 20,000 new visas are issued to beneficiaries who hold an advanced degree from an accredited U.S. college or university (Master's cap). Petitions that are subject to the annual cap include petitions that are filed for first time H-1B beneficiaries, or for beneficiaries who have been outside the U.S. for at least one year since exhausting any prior permissible H-1B time and are seeking to return to the U.S. for a new period of H-1B admission.^[1] Historically, substantially more applications are filed for cap-subject H-1B visas than are available, so USCIS conducts a lottery to award the available allotment.

For the upcoming fiscal year (FY2020), USCIS will begin accepting cap-subject H-1B petitions on **Monday, April 1, 2019**. Under the new regulations, all registrations (both advanced degree and bachelor's degree registrations) will first be counted towards the bachelor's degree cap, and a lottery will be conducted to distribute those visas from among all those candidates. Once this cap is reached, USCIS will then randomly select from the remaining eligible registrations those beneficiaries who will receive the 20,000 Master's cap visas.

Employers should begin considering which of their employees or prospective employees may need H-1B cap-subject filings, including those with advanced degrees. Most commonly, these are recent college graduates who are working on F-1 Optional Practical Training (OPT). For multinational companies, the list may include L-1B employees who are nearing the five-year limit on their L-1B stays in the U.S. Other common examples include H-4, L-2, and E-2 employees working on Employment Authorization Documents (EADs) who may wish to hold a status that is not dependent upon their spouse's status. Employers should anticipate their workforce needs for FY2020, and carefully consider whether the filing of cap-subject H-1B petitions is needed.

If you think you have a candidate for H-1B status who might be subject to the cap, we encourage you to contact us as early as possible to discuss the timing of filing the petition. Historically, the H-1B cap is reached within the first few days of the initial filing date. In light of the economic forecast, increased USCIS scrutiny of petitions, and the historical numbers of filings, employers should act quickly to allow sufficient time to prepare the H-1B petitions and assure the applications reach the USCIS on April 1, 2019. Ideally, preparation of these petitions will begin at least a month in advance.

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[1] Petitions filed by certain non-profit organizations and by institutions of higher education may be exempt from the cap. In addition, individuals who have already received H-1B visas may not be subject to the cap.