



BUSINESS IMMIGRATION

Launching H-1B Cap Season: Important Insights and Changes

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U.S. Citizenship and Immigration Services (USCIS) has announced that the initial electronic registration for the fiscal year (FY) 2025 H-1B cap season will open at noon Eastern on March 6, 2024 and will run through noon Eastern on March 22, 2024. Beneficiaries of selected and approved H-1B cap-subject petitions will be eligible to commence employment in H-1B status in the United States on October 1, 2024.

FY 2025 H-1B CAP KEY POINTS

- Employers seeking H-1B visas subject to the cap must electronically register each intended beneficiary with USCIS from March 6 through March 22.
- Despite USCIS introducing a new fee schedule, the FY 2025 H-1B online registration fee remains at \$10.
- Employers may submit an H-1B cap petition only for the beneficiary specified in the selected registration; no substitutions are permitted.
- If registrations exceed the available H-1B visas by March 22, USCIS will initiate a random selection process to fulfill the projected cap for FY 2025 H-1B visas.
- Master's cap registrations will be afforded two opportunities for selection in the overall process.
- USCIS anticipates completing the random selection process and informing employers of selected registrations by March 31, 2024.
- Following the initial selection, employers will have a 90-day timeframe to file H-1B cap petitions for the beneficiary indicated in the selected registration. The petition filing period is expected to commence no later than Monday, April 1, 2024.



- In the event that, by the conclusion of the initial 90-day filing window, USCIS has not received a sufficient number of petitions to meet the annual H-1B quota, USCIS may designate subsequent filing windows until the H-1B statutory quota is met.
- The annual numerical limit (cap) consists of 65,000 new statuses/visas each fiscal year (beginning October 1 and ending September 30), with an additional 20,000 H-1Bs allocated to beneficiaries with a U.S. master's degree or higher.

FY 2025 H-1B CHANGES

- **Filing Fee Increase**: From April 1, 2024, a new USCIS rule will increase fees for H-1B and other petitions. The Form I-129 filing fee for for-profit employers with over 25 employees will rise by 70% from \$460 to \$780 (excluding ACWIA and Fraud Prevention Fee), while the fee for non-profits and employers with 25 or fewer employees will remain at \$460 (excluding ACWIA and Fraud Prevention Fee).
- **Beneficiary-Centric Registration Selection Process**: USCIS is revamping the H-1B cap selection process by implementing a beneficiary-centric approach. Registrants must provide valid passport or travel document information for each beneficiary. Each beneficiary should be registered under only one passport or travel document, and it must be the one intended for H-1B visa use.
- **Organizational Accounts Implementation**: USCIS is introducing "organizational" accounts to replace "registrant" accounts. U.S. employers and their legal representatives must use these new organizational accounts for cap registrations. Starting February 28, 2024, intending registrants can create organizational accounts, and those with existing registrant accounts can upgrade to organizational accounts.
- **New Edition of Form I-129**: A new edition of Form I-129 will be mandatory for H-1B petition filings on and after April 1, 2024.
- **Online Filing of Form I-129**: Starting on April 1, USCIS will accept online filings for H-1B cap petitions and associated Forms I-907 from petitioners with selected registrations (the online filing for non-cap H-1B petitions will commence on February 28, 2024). Petitioners will retain the option to file a paper Form I-129 H-1B petition and any associated Form I-907 if they prefer.
- **Employment Start Date Flexibility**: USCIS will permit flexibility in selecting employment start dates for certain H-1B cap-subject petitions, allowing employers to choose a start date after October 1 of the relevant fiscal year in some cases.
- **Authority for Denials or Revocations**: The new rule reinforces USCIS's authority to deny or revoke H-1B petitions if the underlying registration contains false attestations or is otherwise invalid.



H-1B RECAP

WHAT IS THE H-1B VISA CATEGORY?

The H-1B visa category is available for temporary non-immigrant employment of highly educated foreign professionals in "specialty occupations" which require at least a bachelor's degree or the equivalent.

To sponsor a foreign national for an H-1B visa, the employer must demonstrate that:

- The job meets the specialty occupation requirements (see "Specialty Occupation Defined" below);
- The foreign employee holds a bachelor's degree or its equivalent in a field related to the position and, if required by state law, an unrestricted state license, registration, or certification to fully practice the specialty occupation in the state of intended employment; and
- The employer has secured the certified labor condition application (LCA) from the U.S. Department of Labor (DOL).

SPECIALTY OCCUPATION DEFINED

To qualify as a specialty occupation, the position must meet one of the following criteria:

- Bachelor's degree or higher or its equivalent is normally the minimum entry requirement for the particular position;
- The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, the job is so complex or unique that it can be performed only by an individual with a bachelor's degree;
- The employer normally requires a degree or its equivalent for the position; or
- The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

H-1B CAP-EXEMPT CASES

Certain H-1B visa petitions are not subject to the annual cap and, therefore, do not need to go through the lottery selection process before employers can file an H-1B petition. Exempt petitions include those seeking an extension or amendment of a previously approved cap-subject H-1B petition, as well as petitions filed by an institution of higher education or a related/affiliated nonprofit entity, a nonprofit research organization, or a governmental research organization.



LABOR CONDITION APPLICATION (LCA)

Employers seeking H-1B visas must secure an LCA certification from the DOL before submitting their H-1B petition, in which the employers must make the following attestations:

- The employer will pay the H-1B worker the prevailing or the actual wage (paid to similarly qualified workers at the place of employment), whichever is higher;
- The employer will provide working conditions that will not adversely affect other similarly employed workers;
- At the time of the LCA filing there is no strike or lockout at the place of employment;
- Notice of the LCA filing has been given to the union bargaining representative or posted at the place of employment; and
- The H-1B worker has been provided with a copy of the LCA.

H-1B PERIOD OF STAY

Initial H-1B petitions may be approved for up to three years, with subsequent extensions for up to another three years. Typically, the H-1B worker's total period of admission may not exceed six years, with exceptions available to some H-1B holders, including beneficiaries of pending labor certification applications or employment-based immigrant petitions.

CONCLUSION

Effective planning is important to ensure the timely submission of the H-1B registration and petition. Employees are advised to verify the validity of their passports and gather all necessary documents related to immigration and travel history, education, experience, foreign credential evaluation, and other required paperwork well in advance of the H-1B filing. All foreign language documents must be accompanied by certified English translations. For employees seeking to include dependents as derivatives with their H-1B petitions, it is essential to ensure that all dependent documents are prepared and up to date. Employers who missed the H-1B filing season in March 2024 will have an opportunity to submit their H-1B petitions only in March 2025, with an employment start date on or after October 1, 2025.



If you have any questions about the H-1B visa classification or need assistance with the H-1B application process, contact Anna Putintseva at the Bousquet Holstein Immigration Group at aputintseva@bhlawpllc.com or 315-701-6372. Anna is an experienced business immigration attorney with expertise in guiding employers and employees through the preparation of H-1B and other business immigration applications.