



2020 Deadline & Procedural Changes for H-1B VISA—Fiscal Year 2021 CAP Season

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For employers seeking to hire a foreign worker for a “specialty occupation” (generally, a job that requires at least a Bachelor’s degree or its functional equivalent in a particular occupation), an H-1B Employment Visa may be the perfect fit for your hiring needs. The H-1B Visa includes the following features:

- 1. Duration** – H-1B Visas are issued for an initial term of three years, with the option of a three-year extension.
- 2. Dual Intent** – The visa holder can have a temporary or permanent intent to reside in the U.S.; this allows some flexibility as it permits the visa holder to pursue permanent residency both without leaving the U.S. and without violating his or her temporary visa status.
- 3. Change of Status** – An H-1B Visa can often be obtained in the U.S. for a change of visa status, without traveling to a foreign consulate to acquire the new visa and seeking re-entry into the U.S.
- 4. Portability** – In the event of a change of employment, an H-1B can be transferred to a different employer.

Because this visa option is so useful, it is also very popular, and quantities available are limited annually. A major hurdle for employers is that the number of H-1B petitions submitted typically far exceeds the annual allotment. Currently, H-1B regulations permit an annual allotment of 65,000 H-1B Visas and an additional 20,000 Visas for those who have earned a U.S. Master’s degree or higher. In 2019, 201,011 petitions were received within the filing eligibility period.

Previously, all applications filed in the first week of April were placed in a random lottery for determining which petitions would be accepted for further adjudication, with losers and late filers stuck out of luck until the following year. The random selection process has recently undergone a few changes. Beginning this year, the H-1B random selection process requires employers seeking H-1B workers to register

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electronically. This initial registration costs \$10 and only requires basic information about the company and the requested workers. Only the selected registrations are eligible to file an H-1B petition.

Another change, implemented in 2019, advantages advanced degree applicants. Those eligible for the advanced degree exemption are now included in the initial selection of 65,000 H-1B registrations, which occurs first. Then, 20,000 advanced degree exempt registrations will be selected out of those remaining. This effectively gives those with an advanced degree two chances in the lottery.

Employers can complete the electronic registration process from March 1, 2020 through March 20, 2020. The random selection process will be run only on electronic registrations submitted during that period. Selected registrants will be notified by March 31, 2020. Employers will have at least 90 days from the date of selection to submit an H-1B petition for the selected registrant.

For years, dynamic and growing companies have been frustrated by the cap's impact on their ability to hire the best and brightest talent to meet their needs. The time to start strategizing and preparing for the H-1B petition process is now.

If you have any questions regarding immigration visas or the electronic registration process, please contact a Foster Swift immigration law attorney.
