

Updates to the H-1B Visa Lottery Process for Fiscal Year 2020

February 7, 2019

The H-1B program allows companies in the United States to temporarily employ foreign workers in specialty occupations. H-1B specialty occupations are positions that require the theoretical and practical application of a body of highly specialized knowledge, gained through a minimum of a bachelor's degree or higher in a specific specialty, or its equivalent. Examples include occupations in fields such as science, engineering and information technology. The foreign national's educational background must also be directly related to the offered position. Employers also must attest to the Department of Labor (DOL) that they will pay the foreign worker wages (for the entire H-1B approval period) which are at least equal to the actual wage paid by the employer to other workers with similar experience and qualifications, or the prevailing wage for the occupation in that employment location.

Each year, USCIS imposes an annual numerical cap on the number of H-1B temporary work visas it will issue to foreign professionals. As in previous years, 65,000 visas will be available for bachelor's degree holders, with an additional 20,000 available for those holding master's degrees from U.S. universities. The first day on which H-1B petitions can be filed is April 1, 2019, with an effective start date of October 1, 2019. Consistent with the past five years, it is expected that the numerical cap will be reached within the first week of April. As such, if the number of H-1B petitions that U.S. Citizenship and Immigration Services (USCIS) receives within the first five working days of April exceeds the numerical cap of 85,000 within that time, USCIS will conduct a lottery to randomly select petitions for processing.

This year, USCIS has revised the H-1B regulation, reversing the order by which H-1B CAP petitions are selected. Currently, there are 65,000 visas available to employees who hold a minimum of a bachelor's degree or equivalent, and an additional 20,000 visas available to employees who hold a U.S. master's degree. In contrast with previous years, USCIS will now count all applicants towards the number projected as needed to reach the regular 65,000 H-1B CAP first, and then select an additional 20,000 applicants to meet the advanced degree (or master's degree) H-1B CAP.

Government challenges in response to H-1B petitions have increased significantly over the past two years, up nearly 65% from prior years. In this challenging environment, it is critical that each petition be thoroughly evaluated and prepared by an expert. It is also important to start the process well in advance of the filing date so that certain preliminary, required steps can be taken beforehand, such as obtaining a certified Labor Condition Application (LCA) from the DOL, and obtaining expert opinions and evaluations. Finally, because a second government shutdown continues to be a possibility, it is especially important to start the process early. Taking all of these factors into consideration, preparation of the H-1B petition should commence no later than the middle of March in order to ensure the case can be timely filed on April 1.

Employers should select any employees they wish to sponsor for H-1B visas under the FY2020 H-1B cap as early as possible, and notify the Miller Canfield Immigration Team to begin the preparation of the H-1B petitions for those employees. Our team is prepared to provide the expertise required to guide employers through this process, and we therefore encourage you to contact us as soon as possible for an assessment of your employees' eligibility.