

What Employers Need to Know About the New H-1B Cap Lottery Process

by Ieva Aubin

H-1B visas are temporary work visas for specialized professionals. Nearly all employers are subject to what is known as the “H-1B Cap,” an annual limit (or cap) on the number of H-1B visas granted every fiscal year. Under current law, USCIS can approve 65,000 “regular cap” visas per year, and an additional 20,000 for foreign nationals with a U.S. master’s degree or higher, all with an October 1 effective date. (October 1 is the start of the U.S. government’s fiscal year when the cap is replenished annually).

Demand consistently outweighs supply, so in recent years the H-1B cap has been reached immediately within the first week of authorized filings, historically the first week of April. In 2019, for example, USCIS received over 200,000 H-1B cap petitions subject to the 85,000 annual limit.

USCIS has now announced that it will significantly modify the H-1B cap lottery process, such that employers will NOT file the complete petition filings on April 1. Rather, the new process will involve an online registration for the H-1B cap lottery prior to April 1 with abbreviated information, and only those selected in the lottery will be permitted to file full H-1B petitions. The new online registration process has a new \$10.00 registration fee, per filing.

While several unknowns still exist regarding the new online H-1B cap lottery registration process, the following are some important timing factors to consider for employers interested in sponsoring a foreign national for an H-1B visa this year (2020):

- In January 2020, employers should identify all foreign nationals who will require H-1B cap sponsorship. If you are a current client, we are happy to review items and information for potential H-1B cap cases now. Feel free to contact us for a comprehensive list of items and information needed for preliminary case analysis. Most commonly H-1B cap candidates are currently in the United States in F-1 student status, often working pursuant to OPT and STEM OPT; but there could also be people being sponsored directly from abroad, as well as people in other temporary visa status like TN or L-1 who seek H-1B.
- In February 2020, the Dorsey immigration team will engage in related due diligence to

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prepare and submit Labor Condition Applications (“LCAs”) for all potential H-1B cap cases.

- In March 2020, we plan to submit the online H-1B cap lottery registrations for cases where we have filed the LCA. This electronic registration process is the new step in the H-1B cap process. The registrations are done per case, via an attorney account.
- In April 2020 and May 2020, those cases that were selected in the H-1B cap lottery will proceed such that complete filings will be submitted in April and May, with effective dates for October 1, 2020. At this time it is unclear whether premium processing will be available for completed filings after the H-1B cap registration and lottery process.

Please contact your immigration attorney at Dorsey & Whitney if you have any questions about this new H-1B cap lottery process. As noted, you should identify all foreign nationals needing H-1B cap sponsorship and move ahead this month - January 2020.