

Insights, News & Events

ARE MORE H-1B SELECTIONS COMING? USCIS RECEIVES RECORD REGISTRATIONS FOR FY 2024 CAP SEASON

Insights
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U.S. Citizenship and Immigration Services (USCIS) announced on April 28 that it has received a record 758,994 eligible registrations – all vying for the 85,000 new H-1B visas that were made available for Fiscal Year 2024. Of the total registrations submitted, approximately 14% have been selected so far – but we may see a second lottery if some employers decline to file full H-1B petitions for all of their selected candidates. Additionally, a huge increase in registrations for FY 2024 has led USCIS to question whether certain U.S. employers were improperly colluding to get an unfair advantage in the selection process. This investigation could result in additional case selections being reversed, meaning more visas will become available for FY 2024. What do you need to know about the current H-1B cap season and what should you expect if your candidate wasn't selected?

Background: The H-1B Category

The H-1B nonimmigrant visa category allows U.S. employers to sponsor foreign workers for temporary employment in "specialty occupations," typically requiring a bachelor's degree or its equivalent based on employment experience. Eligible employment for H-1B sponsorship encompasses a broad range of categories, including engineering, information technology, medicine, business administration, and social sciences.

To limit the number of visa holders entering the U.S. workforce each year, Congress has set an annual limit or "cap" of 65,000 individual H-1B visas, with an additional

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20,000 available for candidates who have earned a U.S. master's degree. Once the total of 85,000 H-1B visas has been awarded, no new cap-subject H-1B employment is possible. Instead, employers and their candidates must plan to make another H-1B cap attempt the following fiscal year.

The H-1B Cap Lottery

Due to extremely high demand, each year USCIS receives far more requests for new H-1B visas than can be accommodated. To ensure candidates are given a fair chance at selection, USCIS conducts an annual lottery process for thousands of registrations. Selected candidates are chosen at random until the 85,000 limit is met. Registrations submitted on behalf of all other candidates are rejected.

You should note, however, that the process has evolved in recent years. Until recently, employers were required to submit a full H-1B petition with USCIS – with all required government forms, supporting documents, and filings fees – on behalf of each sponsored H-1B cap candidate. The effort was extremely wasteful in terms of time and cost, as a large portion of petitions would simply be returned unopened since they were not selected as part of the annual quota. To remedy this, USCIS introduced a special pre-filing registration process, which was first implemented as part of the FY 2021 cap.

Under the new registration process, U.S. employers need only submit basic details for each sponsored candidate (including name, date of birth, and passport number), along with a nominal per-case fee of \$10. Using this information, USCIS will conduct its annual lottery, after which employers are invited to file a full, per-case H-1B petition for selected candidates.

Steady Uptick in Annual H-1B Candidates

The ease of the H-1B registration process has been, in theory, a benefit to U.S. employers. More easily than ever, candidates may be sponsored each year, as the administrative effort associated with the preparation of hundreds or even thousands of individual H-1B petitions filed on behalf of cap-subject candidates has given way to a streamlined system, where employers need only submit candidates' basic biographical details, along with a small

fee. Filing a full petition only becomes necessary when an employer is certain that a candidate has been selected.

In practice, however, the registration process has been increasingly seen as an impediment by some employers. As the registration process has made the H-1B lottery less costly – and more user-friendly – the number of sponsored candidates has rapidly increased from year-to-year, which has driven down the percentage of selected cases.

Cap Fiscal Year	Total Registrations	Eligible Registrations*	Eligible Registrations for Beneficiaries with No Other Eligible Registrations	Eligible Registrations for Beneficiaries with Multiple Eligible Registrations	Selections**
2021	274,237	269,424	241,299	28,125	124,415
2022	308,613	301,447	211,304	90,143	131,924
2023	483,927	474,421	309,241	165,180	127,600
2024	780,884	758,994	350,103	408,891	110,791

In just four years, the total number of H-1B cap registrations has exploded with a nearly threefold increase. Simply put, the government has made it much easier for employers to sponsor candidates in the H-1B lottery. Employers have taken note of this and significantly increased their annual sponsorship totals.

Concerns About Employer Collusion

The uptick in registrations has prompted USCIS to take a closer look at whether employers are following the rules. Historically, a candidate in the H-1B cap lottery would be sponsored by a single U.S. employer for a specific offer of employment. Over the past few years, this sort of traditional H-1B sponsorship has modestly increased from 241,299 registrations in FY 2023 to 350,103 in FY 2024.

More shockingly, the number of candidates who have been sponsored by multiple employers (as shown in the table above) has skyrocketed from 28,125 in FY 2021, to 408,891. The federal government has indicated that this 1,400% increase could mean some U.S. employers are agreeing to sponsor one another's candidates in the annual lottery. By submitting multiple registrations for a single candidate, employers exponentially increase the chances of selection for some individuals, while putting other employers at a distinct disadvantage.

For a very long time, it has been unlawful for a single U.S. employer or its corporate affiliates to submit multiple H-1B cap lottery bids for any one individual. There is no regulation or precedent case law, however, that prohibits the sponsorship of a single individual by *multiple, unaffiliated* employers. However, the Biden administration is nevertheless investigating the situation based on initial findings that a small contingent of technology companies colluded in their FY 2024 cap efforts. Michelle Hackman recently [reported](#) for *The Wall Street Journal*:

Though it isn't technically illegal for a foreign worker to have multiple companies submit visa applications on their behalf, companies submitting applications must attest that they have a real job for the employee in question if they win a visa. If companies that win a visa then quickly contract an employee out to third parties, or lay off an employee on the visa so he or she can switch companies, that could potentially amount to fraud.

The government declined to name the companies in question, citing their status of being under investigation. People familiar with the situation said they are small companies in the tech and information-technology sectors that aren't household names, some of which were potentially set up with the express purpose of submitting duplicate visa lottery entries.

Along with the usual administrative penalties available to USCIS, such as rescinding an employer's H-1B cap selections and/or debaring an employer from future participation in the annual lottery, the agency is also conferring with federal law enforcement agencies regarding potential criminal prosecution.

What If Your Candidate Was Not Selected?

If USCIS finds that some employers gained an unfair advantage by improperly coordinating H-1B registrations, this may prove to be a boon to other employers. It is very possible that USCIS will conduct a follow-up lottery process to redistribute H-1B selections to presently unselected candidates who had been sponsored through a single registration.

A subsequent H-1B cap lottery would not be without precedent. In prior years, USCIS has conducted a second-

round, and even a third-round selection process, to ensure that the statutory annual quota is met. Because the registration process is prospective in nature, U.S. employers have sometimes declined to file full H-1B petitions for all of their selected candidates, which has led to a shortfall in total case filings and the need for subsequent case selections to reach the limit of 85,000 visas. USCIS could resort to a similar process, if necessary, to ensure that the FY 2024 limit is fully and fairly reached.

Conclusion

Employers are advised to watch for further announcements from USCIS since a potential second cap lottery is likely to occur if a significant number of case selections are reversed. Fisher Phillips will continue to monitor developments and provide additional guidance as warranted. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Immigration Practice Group](#) or [Technology Industry Group](#).