

EMPLOYEES CAN RENEW THEIR H-1B VISAS STATESIDE AS OF JANUARY 29: AN EMPLOYER'S 4-POINT PLAN

Insights
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We told you that stateside H-1B visas were on their way back – and now we have a date. Starting January 29, H-1B visa holders will be allowed to renew their expiring or about-to-expire visas without leaving the U.S. This significant development, announced yesterday, will provide welcome relief to many foreign nationals and could play a key strategic role in your workforce planning in the new year and beyond. Follow four key steps to get the most out of this new program.

Key Limitations

This new stateside visa program is only for the following individuals who meet all three requirements:

- Those who received their H-1B visa stamps from any one of the U.S. embassies or consulates located only in India or Canada. Those who received their prior H-1B visas from any other U.S. embassy or consulate do not qualify.
- Those whose H-1B visas have issuance dates between January 1, 2020, and April 1, 2023, for Canada, and February 1, 2021, to September 30, 2021, for India.
- Those who are currently in the U.S. under valid H-1B status and have last entered the U.S. under H-1B status.

Note that even if an applicant meets all three of the above requirements, if any H-1B visa renewal applicant does not qualify for any waiver of the visa interview if they were to apply for the visa renewal at any U.S. embassy or consulate

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or have ever received a “clearance received” notation in any prior visa issuance, then those applicants too will not be eligible for the stateside H-1B renewal.

Timing and Details

The application window will begin on January 29 and ends on April 1 for no more than 20,000 total applicants. The distribution of the 20,000 visas will occur piecemeal beginning on January 29.

- The U.S. State Department will accept no more than 4,000 total H-1B visa renewal applications divided equally between 2,000 applicants who received their visas at the U.S. embassies and consulates in India and Canada.
- Once the first 4,000 applications are received on or after January 29, those who did not apply in time will have to wait for four other dates when the State Department will reopen 4,000 additional application slots. Those dates will be on February 5, February 12, February 19, and February 26.
- When each new date opens up, the State Department will take in applications on a first-come, first-served basis. Depending on the level of demand, it is possible the 4,000 applications slots for each date above could get used up that very day.

[Here is the specific link to apply](#) – but this link will not be active until January 29. It will then immediately close once the 4,000 application numbers have been reached for that date.

What’s Next?

If an H-1B visa renewal application is accepted, then the government will provide instructions regarding the specific documents they will need to submit. This includes completing the DS-160 online visa application form, paying the MRV \$205 visa fee, and providing their original unexpired passport, copy of the H-1B status documentation, and passport photo.

After applying and submitting the appropriate documentation, the estimated wait time to receive their passport with the new H-1B visa stamp is six to eight weeks. In any event, all applications that are accepted and qualify

for the H-1B visa will be issued no later than May 1, 2024. There are no expedited processing options.

Further, if the applicant develops an emergency and cannot wait for the H-1B visa renewal to be issued, then they will have to notify the agency and withdraw their application.

Note that you and your employee might not be in the clear even if an application is initially accepted. The State Department could later reject the application if officials determine it was not properly prepared, or if the application would not have been qualified for interview waivers had the applicant applied at any U.S. embassy or consulate, or if there are any other reasons that prevents the H-1B visa renewal. In such instances, the State Department will not refund any of the fees or costs expended to apply for the visa renewal process. It is to your benefit to make sure your organization's employees get it right the first time – and act expeditiously.

What Should Employers Do? 4-Point Plan

The time to plan for this new process is now. Here are four steps to take into account as you prepare for this significant shift.

- **Plan Ahead:** It is important to remember that an employee availing themselves of this process will be mailing their passport to the federal government. They might not receive it back timely, which could impact your ability to send them for urgent business travel. Moreover, this process is not available for brand new transferees to the U.S. The greatest benefit is likely to be afforded in situations where (1) travel is anticipated, but is neither continuous nor urgent, (2) consular delays outweigh potential visa renewal processing delays, and (3) reciprocity rules limit the number of times a visa can be used.
- **Audit Your Workforce:** You should ensure that all H-1B employees have their current and accurate visa documentation in place. This includes their current visa status, employment contracts, any prior renewal documentation, and other essential paperwork. A thorough audit will streamline the renewal process when the time comes.

- **Create a Travel Forecast:** Evaluate your employees' potential travel plans for 2024. If they are expecting to engage in critical business travel while the passport is with the federal government, it might be wise to adjust the timing of the visa renewal (if possible) or travel schedule.
- **Establish a Communication Channel:** Establish a dedicated channel or point of contact for all visa-related matters within your organization. Ensure that the HR team, the impacted employees, and their managers understand the new process and know whom to approach for clarity. This will avoid confusion within your organization and create a streamlined flow of communication.

Conclusion

If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Immigration Practice Group](#). We will continue to monitor further developments and provide updates on this process, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information.