



H-1B Visa Lottery Looms Under Shadow Of Trump Executive Orders

Insights

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Over the past several days, President Trump has passed numerous executive orders addressing immigration. Thus far, none of these orders have targeted employment-based immigration, but it is possible that this topic could be addressed at any point in the days or weeks ahead. In particular, the H-1B visa category drew attention from Trump during the campaign.

As we noted in our post-election preview of the Trump administration, the president's campaign promises included a vow to alter those temporary work visa programs (such as H1-Bs) that allow employers to bring on highly skilled foreign workers. While we still predict movement in this area in the early days of Trump's presidency, it is unclear what specific steps will be taken to address the issue.

Lottery Preview

H-1B visas are for professionals in "specialty occupations" positions which require at least the equivalent of a Bachelor's degree in a specialty field. Last year, over 230,000 H-1B visa applications were submitted to participate in the "H-1B Lottery," and a similarly high number of requests is expected this year. A lottery is needed because there are only 65,000 new H-1B visas available each fiscal year, with an additional 20,000 reserved for foreign nationals with an advanced degree from a U.S. institute of higher education.

For the period of April 1, 2017 through April 7, 2017, employers will again be eligible to file for visas that will be released for fiscal year 2018. If selected in the random lottery and approved, the foreign national will be able to start H-1B employment on October 1, 2017.

Employers seeking to file an H-1B visa for an individual who has not held one in the past would be subject to the H-1B lottery. This includes several categories of visa holders who are already working in the United States, such as students on F-1 visas currently working on Optional or Curricular practical training, TN visas under NAFTA, L-1 Intercompany transferees, Australians on E-3 visas, and exchange visitors under J-1 visas. Foreign nationals currently in the U.S. in H-1B status are exempt from the annual lottery system, as are employees of certain qualifying organizations, such as institutions of higher education, among others.

What Should You Do?

For now, you should assume that the lottery will proceed as usual, although you should be ready to make adjustments depending on the actions of the new president. This means planning ahead as far as possible. If you plan to sponsor a foreign national for H-1B status this year, we recommend starting the process immediately to ensure that the petition is submitted to the U.S. Citizenship and Immigrations Services during the first week in April. Feel free to contact any member of our [Global Immigration Practice Group](#) to get started.

Please visit our [Cross Border Employer Blog](#) for additional information about immigration developments under the new administration.

If you have any questions about the H-1B Lottery or how it may affect your business, please contact any member of our [Global Immigration Practice Group](#), or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of a developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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