



Government Unveils Details For 2019 H-1B Lottery

A 5-STEP PLAN TO SUCCESSFULLY NAVIGATE THIS YEAR'S LOTTERY

Insights

2.05.19

The federal government just published its final rule amending the regulations that will govern petitions filed under the H-1B work visa lottery. Although the final rule is effective April 1, 2019, the Department of Homeland Security (DHS) has announced it will suspend the electronic registration requirement for employers for this year's H-1B cap. This will allow U.S. Citizenship and Immigration Services (USCIS) sufficient time to complete the necessary user testing and ensure the system and process are fully functional before they are implemented. If you are unsure how to respond to the announced changes, read on to find our five-step plan to success.

What To Expect This Year

Some things remain the same this year as in past years. Educational institutions, nonprofit research organizations, and governmental research organizations remain exempt from the H-1B cap. Also, employers filing extensions for their current H-1B employees, changes-of-employer for candidates already in H-1B status, or petitions for candidates who were counted against the cap in the last six years are also not subject to the H-1B cap. And there's no change to the fact that the H-1B job must be one that requires at least a bachelor's degree or the equivalent in a specific field for entry, and the foreign worker must have the required degree in the field or the equivalent.

Further, as always, in order to be eligible for selection in the visa lottery, you will need to file H-1B cap-subject petitions using the same process as in prior years by submitting a complete H-1B petition to USCIS. The final rule makes two major changes to the standard process, however:

- It adds an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions. DHS anticipates that the registration requirement will be implemented next year.
- It reverses the order by which USCIS will select petitions under the H-1B cap and the advanced degree exemption. Under the final rule, USCIS will count all applicants towards the 65,000 regular cap first, then select applicants towards the 20,000 advanced degree exemption second. USCIS anticipates that this change will result in an increase of up to 16 percent—or 5,340 workers—in the number of selected petitions for H-1 beneficiaries with a master's degree or higher from a U.S. institution of higher education. The reversal of the order by which USCIS selects petitions under the H-1B cap and the advanced degree exemption will take place this year.

What Employers Should Do Now: A 5-Step Plan

You should continue to work with your Fisher Phillips team to have your H-1B cap cases ready before April 1, 2019 so that they can be timely filed. We suggest that you take the following five steps now to ensure timely filing:

1. **Assess your employment needs** from now until at least October 1, 2020. Do you have new contracts or projects, but not enough workers to help fulfill the terms? Do you employ F-1 students who are working on OPT or STEM OPT Employment Authorization cards? Do you employ H-4 visa holders who are working on Employment Authorization Card that may be eliminated by the Trump administration soon? Do you employ TN or E-3 work visa holders who you are planning to sponsor for permanent residence? If so, they are all candidates for the H-1B lottery.
2. **Start the process immediately.** It generally takes at least 14 days to get the H-1B petition package ready to submit to USCIS. H-1B candidates will need to provide critical documents, such as academic transcripts, degrees, and other evidence, and that takes time to assemble.
3. Get any **Labor Condition Applications** (LCA) filed early with USDOL to avoid processing delays later in the H-1B season. The USDOL website tends to crash when the volume of submissions increases. A certified LCA is a prerequisite to filing the H-1B with USCIS and takes 7 to 10 days to process.
4. If you have foreign workers who earned their degrees outside of the U.S., your immigration attorney will need to **obtain a credentials evaluation** showing that the foreign degree is the equivalent of one awarded by an accredited U.S. institution. Credentials evaluations often take 3-5 business days to process.
5. **Anticipate Request for Evidence (RFE) from USCIS.** USCIS issued RFEs in approximately 70 percent of H-1B cap cases filed. You should work with immigration counsel to ensure the submission of a detailed job description, explanations of how the foreign national's degree relates to the position, and evidence that a degree or the equivalent in a specific field is required for the position.

Conclusion

An H-1B worker may be the perfect fit for your business. If you believe it is a good fit for your organization, you should start the H-1B lottery petition process now. Missing the application window could mean a long wait for the right employee.

We will continue to monitor further developments and provide updates, so you should ensure you are subscribed to Fisher Phillips' alert system to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our Global Immigration Practice Group.

This Legal Alert provides information about a specific federal development. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



Shanon R. Stevenson

Partner

404.240.5842

Email

Service Focus

Immigration