

H-1B Cap Registration Process for New H-1B Slots – Registration Starts March 9, 2021

U.S. Citizenship and Immigration Services (USCIS) will once again be utilizing an Internet-based electronic registration and lottery process for employers seeking to file H-1B petitions for beneficiaries that are required to be counted under the annual allocation of new H-1B slots.

An H-1B cap slot must be obtained in order for a foreign worker to engage in "new" H-1B employment. "New" H-1B employment generally refers to H-1B petitions that are filed for foreign nationals who are not currently in H-1B status. When new H-1B employment requires an H-1B cap visa, it is generally referred to as "cap subject." Foreign workers whose employment is cap subject may not begin their H-1B employment until the beginning of the federal fiscal year for which their H-1B cap visa was issued (*i.e.*, October 1). However, there are exceptions when both new H-1B and continued H-1B employment is not subject to the annual H-1B cap allocation—these are generally referred to as "cap exempt" petitions.

Under these new regulations for the 2022 Fiscal Year (October 1, 2021 to September 30, 2022), employers seeking an H-1B cap slot for an employee will be required to register their company and the intended beneficiary online with USCIS and pay a \$10 nonrefundable lottery fee for each electronic registration. The registration process is not required for cap-exempt H-1B petitions.

USCIS grants 65,000 new H-1B visas per federal fiscal year to employers who hire foreign workers for positions that require at least a bachelor's degree in a specialty field. An additional 20,000 new H-1B visas are available to employers who hire foreign workers with a master's degree from a U.S. university or college. These annual allocation limits are generally referred to as the "H-1B cap."

To participate in the 2022 H-1B Cap electronic registration process, which will occur from March 9, 2021, starting at 11:00 a.m. CST, to March 25, 2021, 11:00 a.m. CST, employers must provide for each registration entry:

- The employer's name, federal employer identification number (FEIN) and mailing address.
- The name, job title and contact information (telephone number and email

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address) of the employer's authorized representative.

- The beneficiary's full name, date of birth, country of birth, country of citizenship, gender and passport number.
- Whether the beneficiary has obtained a master's or higher degree from a U.S. institution of higher education.
- The employer's attorney or accredited representative, if applicable.
- Any additional basic information requested by the registration system or USCIS.

USCIS will use this information solely to select enough H-1B petitions to adjudicate under the 2022 H-1B cap and will not review the merits of any of the supplied information. The selection of registrants will occur through a computer-aided random selection process. The wage rate to be paid to the beneficiary will not be requested as part of the registration process for and therefore will not be a factor in determining who is selected during this year's lottery process. Duplicate registrations for the same beneficiary by the same employer are strictly prohibited. Employers must also attest as part of the registration that they intend to employ the beneficiary. This attestation is being required in order to deter employers from submitting registrations in the lottery but then not pursuing petitions if selected.

USCIS will notify by March 31, 2021, employer selected in the lottery that they are eligible to file an H-1B cap subject petition on behalf of the named beneficiary. The notice of selection will indicate a filing location as well as the designated filing period during which the H-1B petition must be filed and provide instructions on how to file the petition. Employers then will have a 90-day window starting on April 1, 2021, to properly file a completed H-1B cap-subject petition and pay all applicable H-1B filing fees for the named beneficiary.

Winning an H-1B cap slot in the electronic registration process is no guarantee that the H-1B petition will be ultimately approved. Preparation for the 2022 H-1B cap will therefore require a significant amount of pre-analysis and preparation of new H-1B cases in order to ensure that employers are well-prepared to file the necessary paperwork and to make the required eligibility arguments once their cap registration has been selected in the narrow amount of time granted by USCIS within which the petition may be filed.

For questions and assistance in determining how best to prepare for the



upcoming H 1B filing season, please contact Attorney Ben Kurten at bkurten@reinhartlaw.com or 414 298 8222.

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