

Preparing for the Upcoming H-1B Cap Season and New Developments and Trends in H-1B Adjudication

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Agenda



Cap Overview

Lottery Registration and New USCIS Enhanced System

H-1B Filing

New Fees Rule

H-1B Request for Evidence (“RFE”)

Other Updates and Trends

Q&A

H-1B Visa Overview

- Temporary, nonimmigrant classification
- Provides foreign national with authorization to work in the US
- Approval is for 3 years initially, plus 3-year extension
- Employer specific; not transferrable
- H-1B is “capped” at 65,000 visas per year

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The typical H-1B visa is granted to perform services in a specialty occupation that requires a Bachelor's Degree

Understanding the H-1B Cap

- 65,000 visas available per year
- + 20,000 additional visas available for recipients of US Master's degree
- Exemptions apply

Information Needed for Cap Registration



Full name



DOB



Passport; Country of Citizenship



Educational Degrees



Job Description

H-1B Cap Registration Timeline

February 28: Registrants may begin creating *NEW* Organization accounts

March 6 to March 22: H-1B Registration is open! All beneficiaries must be registered

April 1 to June 30: For selected applicants, H-1B applications may be filed

TBD: Second or Third Lottery may be run, depending on whether all H-1B visas have been used

New This Year: Changes to Company Registration Accounts



“Organization” Accounts are replacing “H-1B Registrant” Accounts on Feb 28



Administrator Account vs. Member Accounts



Best Practice: Employers maintain access to Organizational Accounts



Resources: Webinar February 21; Tech Talks on USCIS YouTube Channel

H-1B Filing



H-1B Final Rule Updates



Step-by-Step: What is required for an H-1B filing

Important Takeaways from H-1B Final Rule for FY2025

- Beneficiary-centric registration selection process: each Beneficiary can be entered into the lottery ONCE
- Passport must be valid and used upon entry to the U.S., and only ONE passport can be used per Beneficiary
- Start date no longer has to be October 1st
- Grounds to revoke or deny H-1B petitions with underlying false and inconsistent information on the H-1B registration
- Final rule to be published on other H-1B matters outside of the registration process

H-1B Filing Steps

1. Job Description and Wage Search:

<https://www.flcdatcenter.com/>; ONET; OOH

2. Labor Condition Application:

<https://flag.dol.gov/programs/LCA>

3. Notice of Posting (Hard Copy or Electronic)

4. H-1B Petition which consists of the following forms:

G-28, Notice of Entry of Appearance of Attorney

I-129, Petition for Nonimmigrant Worker

I-129H, Supplement for H Classification

I-129, H-1B Data Collection and Filing Fee Exemption

I-907, Request for Premium Processing (optional)

H-1B Filing Fees

- **Registration Fee**

- \$10 for FY2025
- \$215 starting in FY2026, March 2025 lottery

- **Base Fee**

- \$780 (larger employers)
- \$460 (smaller employers, non-profits)

- **ACWIA** American Competitiveness and Workforce Improvement Act of 1998 fee

- \$750 (employers with 25 or less full-time employees in the U.S.)
- \$1500 (employers with 26 or more full-time employees in the U.S.)

- **Fraud Prevention and Detection Fee**

- \$500

- **Asylum Program Fee:**

- \$600
- \$300 (employers with 25 or less full-time employees in the U.S)
- \$0 for nonprofits

- **Premium Processing (optional)**

- \$2805

	Registration Fee	I-129 Base Fee	ACWIA FEE	Fraud Prevention Fee	Asylum Program Fee	Total Fees	Difference in Total Fees from previous year
Small Employers	\$10	\$460	\$750	\$500	\$300	\$2,020	\$17.4% or \$300
Large Employers	\$10	\$780	\$1500	\$500	\$600	\$3,390	37% or \$920
Non-Profits	\$10	\$460	\$1500 or \$0	\$500	\$0	\$2470 or \$970	0%

Fee Rule



AILA Documents: <https://www.aila.org/library/featured-issue-uscis-final-rule-adjusting-its-fee-schedule>



Difference in online and paper filing fees



Key Takeaways

Fee Chart (New v. Current Fee)

Type of Filing	Current Fee	Final Fee	Difference in Fees	Percent Difference from Previous Fee	Difference Between Online and Paper Filing
I-485, Application for Adjustment of Status	\$1,140	\$1,440	\$215	18%	\$50
I-140, Immigrant Petition for Alien Workers	\$700	\$715	\$15	0%	N/A
I-765, Application for Employment Authorization	\$410	\$520	\$110	27%	\$50
I-131	\$575	\$630	\$55	10%	N/A
I-539	\$370	\$470	\$100	27%	\$50
I-130	\$675	\$675	\$140	26%	\$50

Fee Rule – Key Takeaways



Different fees based on size of employer/non-profit



Asylum fee



Premium Processing moving to business days



Decrease in Biometric fees

Updates and Trends - H-1B Request for Evidence (“RFE”)

FY2023 Adjudication and RFE Stats

USCIS Challenges Late Amendment Filings

CPT RFEs

“Specialty Occupation” RFEs

Updates and Trends - Stateside Visa Processing

- DOS implementing a pilot program for stateside H-1B visa renewal
 - The pilot program accepts applications from January 29, 2024, through April 1, 2024, or when all application slots are filled, whichever comes first.
 - Participation is voluntary.
 - Maximum of 20,000 application slots during this limited pilot program - Approximately 2,000 per week
- Only available for limited H-1B visa renewals
- H-4 visa renewals are not eligible for this pilot program
- Application involves three steps:
 - Submit Form DS-160;
 - Payment of MRV fee (\$205USD); and
 - Scheduling the domestic renewal appointment
 - Mission Canada domestic renewals: <https://ais.usvisa-info.com/en-us>
 - Mission India domestic renewals: <https://www.ustraveldocs.com/in/en/renewal-h1b-niv-in-us>

Updates and Trends - Stateside Visa Processing

- Eligibility – Limited to H-1B visa applicants who
 - Are renewing a prior H-1B visa issued by
 - *Mission Canada with an issuance date from January 1, 2020, through April 1, 2023; or*
 - *Mission India with an issuance date from February 1, 2021, through September 30, 2021;*
 - Are not subject to a nonimmigrant visa issuance (reciprocity) fee;
 - Are eligible for an in-person interview waiver;
 - Have submitted ten fingerprints to DOS in connection with the prior visa application.
 - Prior visa doesn't include a "clearance received" annotation;
 - Do not have a visa ineligibility that would require a waiver prior to issuance;
 - Have an approved and unexpired H-1B petition, were most recently admitted to the U.S. in H-1B status, and are maintaining H-1B status in the United States;
 - Period of authorized admission in H-1B status has not expired; and
 - Intend to reenter the U.S. in H-1B status after a temporary period abroad.
- DOS H-1B pilot program eligibility assessment tool:

https://docs.google.com/forms/d/e/1FAIpQLSecHSskOLPC-cy_Bg_G0eA4IW9QqBZVcpmMUcj-UNXIfOVSfg/viewform

Updates and Trends – H-1B Proposed Rule

- Some changes have been codified through *Improving the H-1B Registration Selection Process and Program Integrity*
- Additional changes proposed:
 - **Revising definition of “specialty occupation”**: Clarify that an occupation may allow a range of degrees, although there must be a direct relationship between the required degree field(s) and the duties of the position;
 - **Improving program efficiency** – Codify deference to prior determination when no underlying facts have changed at time of a new filing;
 - **Expanding cap exemption** for certain nonprofit entities or governmental research organizations as well as beneficiaries who are not directly employed by a qualifying organization.
 - **Expanding cap gap**
 - **Extend H-1B eligibility to rising entrepreneurs**
- Future of these proposed rules - Unknown

Q&A



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Thank you!

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