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

February 15, 2024



# **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

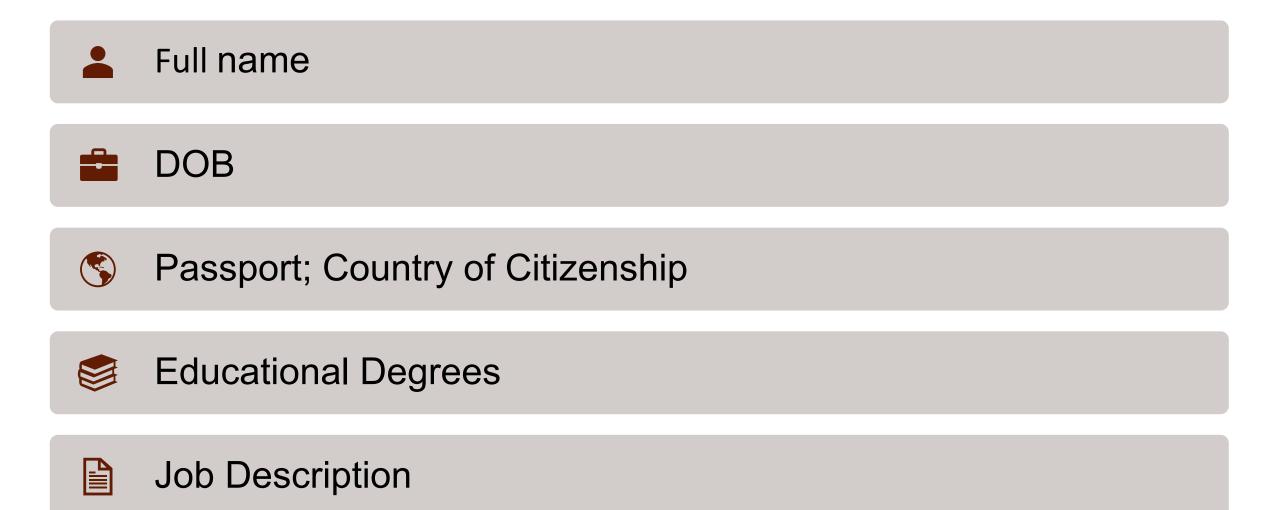
- Temporary, nonimmigrant classification
- Provides foreign national with authorization to work in the US
- Approval is for 3 years initially, plus 3year extension
- Employer specific; not transferrable
- H-1B is "capped" at 65,000 visas per year

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



### 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.flcdatacenter.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: <a href="https://www.aila.org/library/featured-">https://www.aila.org/library/featured-</a> 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







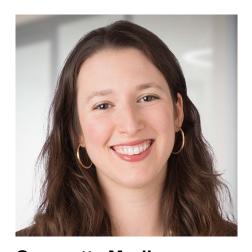
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