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## FY2020 H-1B Cap Season Begins with Proposed Changes

**Legal Update**

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By Immigration Group

It is time to start preparing for H-1B cap season once again! The H-1B is reserved for temporary professional workers filling specialty occupations, which require at least a bachelor's degree or the equivalent in a field directly relevant to the job. With limited exceptions, the H-1B quota applies to new H-1B petitions filed for foreign workers who have not in the past had an H-1B petition filed and approved. Only 65,000 H-1Bs are available each fiscal year, with an additional 20,000 set aside for graduates of U.S. master's or higher degree programs (85,000 total H-1Bs available). U.S. Citizenship and Immigration Services (USCIS) is required to start accepting cap-subject H-1B petitions for fiscal year 2020 (October 1, 2019 to September 30, 2020) on April 1, 2019. While we expect the total number of petitions filed to be down from previous years as a result of stricter adjudication standards and a significant uptick in requests for evidence and denials across industries, we still expect the demand for these coveted H-1Bs to outweigh the number available.

In the past years, in response to significant demand, USCIS has held a random lottery to determine which of the petitions filed within the first seven days of April 1 are selected for processing. If a petition was selected, it was assigned a receipt number and USCIS would move forward with adjudication (approval, denial, request for evidence, etc.). If a petition was not selected, it would receive a rejection notice.

This year, USCIS has proposed a new rule to implement a registry program requiring the sponsoring employer to electronically register online prior to formally submitting an H-1B petition with USCIS. Under this rule, which is currently undergoing a period of comment and review, "USCIS would select from among the registrations timely received a sufficient number projected as needed to meet the applicable H-1B allocations."

In addition, USCIS has proposed changing the process for tallying the number of H-1Bs allocated in any given fiscal year by "first selecting registrations submitted on behalf of *all* beneficiaries, including those eligible for the advanced degree exemption" and then selecting a sufficient number of cases from the remaining registrations to reach the 20,000 U.S. master's or higher degree exemption. This

proposed change is intended to increase the chances that beneficiaries with a master's or higher degree from a U.S. institution of higher education would be selected under the H-1B cap and award H-1Bs to the most-skilled and highest-paid beneficiaries. The proposed rule also limits the filing of H-1B cap-subject petitions to the beneficiary named on the original selected registration to protect the integrity of this registration system.

Comments to the proposed rule are due on January 2, 2019. Following that date the agency is required to review comments prior to finalizing and implementing any final rule. In a press release on its website, USCIS indicates that while it has "been actively working to develop and test the electronic registration system, if the rule is finalized as proposed, but there is insufficient time to implement the registration system for the FY 2020 cap selection process, USCIS would likely suspend the registration requirement for the FY 2020 cap season."

Although this statement leaves room for the possibility that USCIS will roll out the registry program before the April 1, 2019 H-1B cap filing deadline, we are not that optimistic and continue to recommend that employers start preparing their H-1B cap submissions early, ideally just after the New Year, to best position themselves to file their H-1B petitions on April 1, 2019, or timely register under the new system, whichever employers are required to do first.

We will continue to keep you informed of any updates related to the proposed registry. In the meantime, please do not hesitate to reach out to our office for more information on the H-1B visa category or to discuss potential submissions on behalf of your foreign workers.