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USCIS Delays H-1B Wage-Based Selection Process for Cap-Subject Petitions

Legal Update

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This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

U.S. Citizenship and Immigration Services (USCIS) is delaying the effective date of a final rule that changed the selection process for cap-subject H-1B petitions. The rule would essentially eliminate the lottery process to give priority to higher wage offerings. The wage-based selection process is delayed to December 31, 2021, meaning that it will not be in effect for the upcoming H-1B filing season this March.

For the upcoming H-1B cap lottery, USCIS will use the current regulations and selection process (random selection) to select registrations submitted during the filing window of March 9 to March 25, 2021. The H-1B lottery process saw significant changes last year with the implementation of a pre-registration process.

Details:

- "DHS Delays Effective Date of H-1B Selection Final Rule," Feb. 4, 2021
- "Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions; Delay of Effective Date," USCIS, Feb. 8, 2021, Federal Register
- "USCIS Modifies H-1B Selection Process to Prioritize Wages," USCIS, Jan. 7, 2021