

# Navigating the H-1B Process

*Insights into recent changes and strategic considerations*

# H-1B Professionals in Specialty Occupations

- ▶ Position must be within a specialty occupation - i.e., position must require at least a bachelor's degree or equivalent in a relevant field
- ▶ Individual must hold at least a bachelor's or equivalent in the needed field
- ▶ Must pay prevailing wage
- ▶ Very highly regulated

# H-1B's - But Wait, There's More

- ▶ Employer must pay all fees associated with the H-1B
- ▶ Return transport requirement
- ▶ No benching
- ▶ Change in position/ job location
- ▶ Annual quota
- ▶ 6-year max
- ▶ Cap Gap

# H-1B Program Fundamentals

Annual cap on new H-1B visas:

- ▶ 65,000 regular cap and 20,000 for U.S. master's cap, with a lottery when demand exceeds supply.
- ▶ Advantage given to candidates who hold a qualifying U.S. Master's degree or higher.
- ▶ Exceptions to the H-1B cap

# H-1B Exempt Employers

- ▶ Not subject to lottery
- ▶ Exempt employers are
  - ▶ Institutions of higher education (nonprofit colleges or universities)
  - ▶ Nonprofit organizations affiliated with Higher Education Institutions
  - ▶ Nonprofit research organizations
  - ▶ Government research organizations

## H-1B Cap FY 2027 - Key Dates

- ▶ Opened March 4th, and will remain open through March 19th
- ▶ Selections typically occur at **the end of March**, with filing window is expected to open on **April 1<sup>st</sup>** (for a period of 90 days).
- ▶ Earliest start date of employment for approved petitions is **10/1/2026**.

# FY 2027 H 1B Cap Registration Overview

## What Did Not Change

Beneficiary-centric system remains:  
Each individual is counted once,  
regardless of how many employers  
register them

## What Changed

DHS finalized a wage-weighted H-1B  
selection process

Replaces random lottery with new  
weighted lottery that favors  
higher-paid, higher-skilled positions

Higher or lower statistical odds of  
selection based on how their proposed  
salary aligns with DOL wage data for  
their occupation in the area of  
intended employment.



# New Selection Framework

USCIS will conduct a computer-generated random selection process utilizing a weighted selection system:

Wage Level	Entries in Lottery
Level I	1
Level II	2
Level III	3
Level IV	4

Focus is on Proffered Wage

- ▶ Registration wage level selection is based upon the salary offered and NOT the assessment of the required wage level based upon the educational/experience requirements that is used for the LCA.

Example: Employer offers a Software Developer position for employment in Kansas (Clark County) with annual salary of \$111,363.00.

Under DOL prevailing wage guidance, employer classifies the proffered position as Level II. However, for purposes of the H-1B cap registration, the position would be submitted as a Level III.

SOC Code	15-1252.00
Data Series	7/2025 - 6/2026
Collection	All Industries
State	KANSAS
Area Type	County/ Township
Area Selected	CLARK COUNTY - Kansas nonmetropolitan area

### Search Results

Geo Level	1
SOC Code	15-1252
SOC Title	Software Developers

Wage Level	Hourly	Yearly
I	\$33.32	\$69,306.00
II	\$43.43	\$90,334.00
III	\$53.54	\$111,363.00
IV	\$63.65	\$132,392.00
MEAN (H-2B)	\$53.64	\$111,571.00



## Key Considerations in H-1B Registration Strategy

If selected in the cap, the following could result in a denial of the H-1B petition:

Wage listed for the registration is reduced below the wage level used at time of filing H-1B petition.

Filing registration for worksite in area with lower incomes and later filing amendment/new petition for a worksite location in a higher income area.

# New Selection Framework - Key Takeaways

- ▶ New weighted system does not stop employers from sponsoring entry-level or mid-level roles - All wage levels remain eligible for selection in cap process.
- ▶ Focus of wage-based selection is on the wage, not minimum education/experience requirements as required for LCA.
- ▶ Possible lower participation rate, which could increase overall odds of employee selection for H-1B FY 2027.
  - ▶ Two of the top 25 employers of new H-1B visa holders have stated they will halt all new H-1B filings. These two major companies were among those that collectively used about 2/3 of the 85,000 visas available.
  - ▶ Some employers may decide not to participate in this year's H-1B cap or may significantly reduce the number of candidates they register for the lottery because of potential misconceptions about the new system.

# H-1B Proclamation

The new \$100,000 H-1B fee does not apply at the time of registration

## Change of Status Exemption

The new \$100,000 H-1B fee does not apply to petitions filed and approved for a change of status.

For example, a petition filed for an individual who *is physically present* in the U.S. and seeks to ***change status*** from another nonimmigrant status (such as F-1, L-1, TN, etc.) without leaving the U.S. is not subject to the fee.



## H-1B Proclamation (Cont'd)

### When the Fee Applies

- ▶ Cap petition would be subject to \$100K fee if it is filed for and/or only approvable for consular notification. For example:
  - ▶ The foreign national is *outside* the United States at the time of petition filing;
  - ▶ The foreign national is in the United States, but is *not eligible for a change of status* for some reason (such as failure to maintain status or status expiration date prior to effective date of H-1B); or
  - ▶ The foreign national *travels* while the H-1B petition is pending.
- ▶ If the fee is triggered, the H-1B adjudication may be withdrawn if the payment of the fee is not feasible. An H-1B petition that is subject to the fee will not be approved if the fee is not paid.

# H-1B Site Visits

- ▶ “Visitor” may be a USCIS Fraud Detection and National Security Officer or contractor
- ▶ May occur at HQ or worksite
- ▶ Not announced in advance
- ▶ May ask to speak to HR, the foreign worker, HR, managers, other employees

# Info Requested During H-1B Site Visits

- ▶ May ask for info about the company, including nature of business, locations and number of employees
- ▶ May request to see business tax returns, quarterly wage reports
- ▶ Will request detailed information about the H-1B employee's title, job duties, work location and salary

# Questions and Answers

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