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USCIS Proposes Changes to H-1B Quota Lottery Selection Process

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Practices: Immigration

Citing a high demand for H-1B visas for more than a decade, a need to disincentive the wide-spread use of the H-1B program to fill lower-paid, lower skilled jobs, and a belief that higher wages equals higher skills and higher skilled workers, on September 24, 2025, the Department of Homeland Security (DHS) issued a proposed regulation to reformulate the H-1B Quota ("H-1B Lottery") selection process. If implemented, the government contends U.S. employers will have an incentive to recruit for workers with the highest skill level and thus pay them the highest wages and H-1B Lottery selections will go to employers seeking to employ higher paid and higher skilled beneficiaries (H-1B workers).

During FY-2024, 76% of the employers filing H-1B Quota petitions had revenue less than $40 million or fewer than 1,250 employees. The proposed change for the H-1B Lottery selection process has the potential of limiting selections submitted by such small entities.

The H-1B visa classification is primarily dedicated to beneficiaries who work in specialty occupations. Employment in a specialty occupation requires theoretical and practical application of a body of highly specialized knowledge and attainment of at least a bachelor's degree, or its equivalent, in the specialty area.

Under the existing H-1B Lottery, registered beneficiaries are randomly selected for one of the approximately 85,000 new H-1B Cap petition approvals available for the fiscal year. Of those H-1B approvals, 20,000 are reserved for beneficiaries who earned a Master's or higher degree from an accredited U.S. university (the "U.S. Master's Cap"). Once selected, an employer who submitted the registration may file an H-1B petition for employment to begin on or after October 1st.

Proposed Information Change for a H-1B Registration

USCIS proposes that the H-1B registration must represent a bona fide job offer and will include wage information on based upon the U.S. Department of Labor's (DOL) Occupational Employment and Wage Statistics (OEWS) wage level offered for the Standard Occupation Classification (SOC) of the proposed position in the location of employment.

When completing the FY-2027 H-1B registration, the employer would provide:

- The Standard Occupation Classification (SOC) for the proposed position;
- The area of intended employment; and

- Select a box for the appropriate Occupational Employment and Wage Statistics (OEWS) wage level for SOC in the location of employment. The wage offered to the H-1B worker must meet or exceed the specified wage level.

This information would be in addition to the standard information collected in an H-1B registration:

- Information about the employer – employer name, address, FEIN, and person authorized to sign the registration;
- The registrant's name, gender, date of birth, and country of birth;
- The registrant's passport information – country of issuance, passport number and passport expiration date; and
- Whether the registration is for the H-1B Regular Cap or U.S. Master's Cap.

To determine the wage level, the employer can rely on wage data available from the DOL's OEWS or use an alternative prevailing wage source. However, if the alternative prevailing wage is less than the OEWS Level 1 prevailing wage, the employer will select a Level 1 prevailing wage on the quota registration form.

If the proffered wage is a range, the OEWS wage level used is the lowest wage level that the bottom of the range will equal or exceed. If the H-1B worker may work for the employer in multiple locations, the wage level to select is the lowest wage level considering all locations.

Proposed Change in Selection Process

For the H-1B Lottery selection process, if during the registration period, USCIS does not receive a surplus of registrations, all individuals will be selected and USCIS will continue to accept registrations until determining the H-1B quota could be met.

Once USCIS receives more registrations than projected to reach the H-1B quota, which normally occurs each year, USCIS would essentially covert the registrations to a true lottery, entering the beneficiary in the H-1B Lottery pool multiple times, corresponding to their assigned Occupational Employment and Wage Statistics (OEWS) wage level (consider it as more lottery tickets issued).

Under the proposed weighted registration, if a beneficiary has multiple employers file a registration on their behalf, in the H-1B lottery the individual would be assigned the lowest wage level considering all registrations on their behalf. For example, if Employer A offers a level IV wage, and Employer B offers a Level II wage, the beneficiary would be considered a Level II in the H-1B Lottery pool for selection.

The government noted in the H-1B petitions filed from FY-2020 to FY-2024, positions at wage Level III (12% of the H-1B Quota petitions filed) or wage Level IV (5% of the H-1B Quota petitions filed) were the least represented. The majority of the H-1B Cap petitions filed were at a Level II wage (55% of the H-1B Quota petitions filed) and Level I wage (28% of the H-1B Quota petitions filed).

- Individuals offered a Level IV wage are viewed as being "fully competent."
- Individuals offered a Level III wage are viewed as being "experienced."
- Individuals offered a Level II wage are viewed as being "qualified."
- Individuals offered a Level I wage are viewed as being "entry."

Under the weighted registration, a beneficiary classified as a Level IV would be entered 4 times, at Level III would be entered 3 times, at Level II would be entered 2 times, and at Level I would be entered once. This is in-line with the Administration's contention that higher wages equal higher skills and higher skilled workers – assigning more lottery tickets to beneficiaries at higher wage levels.

Using the new weighted selection process, USCIS projects (is offering odds) that selection for a beneficiary registered at Level I is 15.29%, Level II at 30.58%, Level III at 45.87% and Level IV at 61.16%. The increased probability of being selected if registered at a Level IV wage is estimated at 107%.

USCIS will continue to complete the H-1B Lottery selection of the regular cap (65,000) before selecting the additional 20,0000 for the U.S. Master's Cap, affording beneficiaries with a U.S. Master's degree a stronger chance at selection.

Proposed Changes in USCIS Adjudication of H-1B Petitions

If the registration is selected, the Standard Occupation Classification (SOC) for the proposed position; area(s) of intended employment; and appropriate wage level would be noted in the required Labor Condition Application (LCA) filed with the Department of Labor. The H-1B petitioner would also be required to submit a printout confirming the wage level used in the H-1B Lottery registration when filing the H-1B petition. As required for all H-1B petitions, the wage offered in the H-1B petition must meet or exceed the prevailing wage for the area(s) of intended employment.

The expectation that the H-1B Lottery registration information matches the LCA and locations of employment in the H-1B petition may be a challenge for an employer who assigns an H-1B worker to various projects sites. Once the H-1B petition has been approved, if there is a change in worksite, the employer may need to file an amendment with USCIS to update the worksite locations. If the location of employment changes after the H-1B Lottery registration has been selected and before the filing of the H-1B petition, the employer would need to explain the reason for the change and USCIS will exercise discretion if the change is bona fide. If the wage offered in the new location meets or exceeds the wage level stated in the H-1B Lottery registration, USCIS may approve this change. Likewise, if the H-1B petition lists multiple worksites, including the location of employment stated in the H-1B Lottery registration, so long as the proffered wage at the additional worksites meets or exceeds the wage level in H-1B Lottery registration, USCIS may approve the petition for the additional included worksites.

Proposed Changes of Review for Subsequent H-1B Petitions

USCIS acknowledges the right to deny a subsequent new or amended petition by the employer, or a related entity, if it determines the new or amended petition was filed to reduce the proffered wage to a wage lower than indicated in the H-1B Lottery registration or H-1B Cap petition.

For example, if the Software Developer working in Chicago, who is paid $65.00 per hour (a Level III wage), is reassigned to work in Charleston, West Virginia at a wage of $55.00 per hour, USCIS may have questions. Since this wage offered in Charleston, West Virginia is higher than the Level III wage ($51.46 per hour) in that location of employment, USCIS may be willing to exercise discretion and approve this change considering how long the H-1B worker worked in Chicago before the relocation to Charleston, West Virginia,

the reason for the job relocation, and whether the initial registration was bona fide. If the H-1B worker, who works remotely, decides to move to Seattle, Washington, this could be problematic since the Level III wage is $86.88. If the wage is not adjusted, and the employer can only pay the original $65.00 per hour wage, which in Seattle, Washington is between Level I ($56.61 per hour) and Level II ($71.75 per hour), USCIS may challenge the bona fides of the H-1B Cap petition.

Relocating an H-1B worker and offering a wage at a lower wage level may suggest to USCIS that the H-1B Lottery registration and initial H-1B Cap petition did not represent a bona fide job offer. Employers reassigning workers, agreeing to remote work anywhere in the United States, or reducing wages may wish to reassess before filing an amended H-1B petition. Considering the hypothetical situation, if the Software Developer working in Charleston, West Virginia was paid $65.00 per hour, a wage higher than the Level III wage in this location; or paid at least the Level III wage of $86.88 for employment in Seattle, Washington, USCIS may be more favorable in its exercise of discretion when considering the amended H-1B petition. USCIS does retain authority to revoke a previously approved petition.

Similar to the beneficiary-centric registration process for FY-2025 and FY-2026 H-1B Lotteries, a beneficiary may have more than one employer file a registration for them. If the beneficiary is selected, all employers filing a registration on their behalf are notified of the "win" and given an opportunity to file the H-1B petition – a Darwinian approach in the H-1B process.

It is assumed that DHS would like to implement this new selection process in the next H-1B quota registration process which will open up for at least a two-week period in early March 2026.

Additional information about the implementation of the changes to the H-1B Lottery selection process will be contained in future Masuda Funai Client Alerts available on the Masuda Funai website and through the Masuda Funai LinkedIn page

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