

Cross Border Business Law Blog

Alternative Strategies for Rejected FY19 H-1B's

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U.S. Citizenship and Immigration Services (“USCIS”) has started returning H-1B petitions to employers whose cases were not selected in the recent H-1B lottery selection process. The USCIS reported that a total of 195,000 H-1B petitions were received during this year’s qualifying filing period, which began on April 2, 2018 and ended on April 6, 2018. Employers whose H-1B petition was not selected for allocation under the 2019 Fiscal Year H-1B quota will receive their paperwork back from the agency, including the uncashed filing fee checks, by regular mail. The quota (or “cap”) applies to individuals who have never held H-1B status before or who previously worked only for an H-1B exempt employer.

Employers should be considering legal strategies that may allow the individual to continue their employment even after receiving notice of the rejected H-1B petition. Some of these alternative visa options for affected employees include, but are not limited to, the following:

- **Canadian and Mexican professionals:** TN visa available under the North American Free Trade Agreement in qualifying occupations

- **Nationals of Australia:** E-3 visa

- **Nationals of Chile or Singapore:** H-1B1 visa

- **Intracompany transferees:** L-1 visa. An organization with foreign operations can transfer employees to its U.S.-affiliated company in a similar position under certain circumstances.

- **Individuals with a U.S. degree in a science, technology, engineering or math (STEM) field and employers enrolled in E-Verify:** 17-month optional practical training (OPT) extension

- **Individuals who qualify under the extraordinary ability or outstanding researcher criteria:** O-1 visa.

- **Essential employees if the company and foreign national share the same nationality of a qualifying treaty country:** E-1 (Trader) or E-2 visa (Investor)

- **Individuals in F-1 student status:** Continue with F-1 studies and look at internship opportunities under curricular practical training (CPT)

- **Individuals who may qualify under the EB-1 extraordinary ability, EB-1 outstanding researcher and/or EB-2 national interest waiver (NIW) criteria,** pursue concurrent I-140/485 green card process and work authorization issuance

- **For individuals whose employers have offices outside the United States,** placing the employee on the foreign payroll and work abroad until next year's H-1B filing period or until another type of work visa becomes available

- **Individuals entering a structured training program:** H-3 visa

- **Individuals who can be categorized as an Exchange Visitor:** J-1 visa

Every situation is unique and a knowledgeable legal professional should be consulted to identify all available options should the H-1B petition filed on behalf of a foreign national employee be rejected.

Tags: FY19 H-1B, H-1B exempt employer, H-1B petitions, H-1B visa, U.S. Citizenship and Immigration Services, USCIS