

Cross Border Business Law Blog

New Rule Amending H-1B Lottery Selection Process Effective April 1, 2019

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On January 30, 2018, the Department of Homeland Security (DHS) issued a final rule revising the random selection process (commonly referred to as the annual “H-1B Lottery”) by which the U.S. Citizenship and Immigration Services (USCIS) selects new H-1B petitions for adjudication under the annual H-1B quota. The rule is effective April 1, 2019, with no major changes to employers for the upcoming FY20 H-1B filing season; however, the rule does impose a new electronic registration requirement starting next year (FY21).

Starting this April, the USCIS will reverse the order in which it selects H-1B petitions for adjudication. H-1B petitions, filed on behalf all beneficiaries, will first be selected from the annual quota consisting of 65,000 new H-1Bs. Any beneficiaries not selected but who hold an advanced degree from a U.S. college/university will have a second chance to be selected from an additional pool of 20,000 new H-1Bs.

According to the USCIS, this change in order selection will likely increase the number of petitions for beneficiaries with a master’s or higher degree from a U.S. institution of higher education to be selected under the H-1B numerical allocations. Specifically, they estimate an increase of up to 16% (or 5,340 workers) in the number of selected petitions for H-1B beneficiaries holding a U.S. master’s or higher degree.

Starting April 1, 2020, the USCIS expects to complete user testing and have its new electronic registration system up and running. USCIS expects that the electronic registration requirement, once implemented, will reduce overall costs for sponsoring employers and create a more efficient and cost-effective H-1B cap petition process for all stakeholders.

A notice will be published by the USCIS in the Federal Register announcing the initial implementation of its new H-1B registration process in advance of the next cap season when the requirement will take place. Prior to implementation, USCIS will conduct outreach to ensure employers understand how to access and use the system. Once implemented, USCIS will announce the designated electronic registration period at least 30 days in advance for each fiscal year it is required.

Tags: Department of Homeland Security, H-1B filings, H-1B petitions, H-1B visa, U.S. Citizenship and Immigration Services, USCIS