

Cross Border Business Law Blog

## **Employers Should Start Preparing for Upcoming H-1B Cap**

By Leo Peng on 1.22.20 | Posted in Immigration

H-1B cap filing season is fast approaching. U.S. employers who sponsor foreign workers for temporary H-1B work visas should start preparing now for the upcoming new H-1B cap electronic registration commencing this year on March 1, 2020.

### **What Is The H-1B Cap**

The H-1B visa is the standard professional US work visa. There is a quota (or “cap”) each year on the number of new H-1B visas available. Specifically, there are 65,000 H-1B visas available annually with an additional 20,000 for US master’s degree holders. Individuals who have not previously held H-1B status are generally subject to this annual cap. Over the last 5+ years, this cap has been oversubscribed. When this occurs, the US Citizenship & Immigration Service (“USCIS”) opens the filing window for a specific period and accepts electronic registrations for new H-1Bs during that period. Presuming the number of applicants registered during that period exceeds the annual quota, then USCIS plans to run a random lottery to select the applicants who will be eligible for making the H-1B petition filing in the following 90 days.

### **What Is The Process This Year**

The H-1B cap process will be different this year due to some recent changes by the USCIS. Instead of the filing window opening on April 1, and all petitioners submitting complete physical filings for those employees they wish to sponsor, there will be an initial H-1B cap registration process that will open on **March 1, 2020**. This process will be administered online. Details on the specific mechanics of this process are still forthcoming; however, USCIS has indicated that there will be an online registration period from **March 1, 2020 to March 20, 2020**. Petitioners will register for each of the potential H-1B beneficiaries they wish to sponsor for an H-1B this year during this period. There will be a \$10 fee associated with each registration per person. Presuming the number of employees registered exceeds the annual quota, then USCIS will run the lottery based on these registrations. USCIS will then notify petitioners if their beneficiaries have been selected. Petitioners will then have 90 days to submit full H-1B petitions for their selected individuals. It is anticipated that the notification of selection and the 90-day filing window will open around April 1; however, this has not yet been confirmed. As this process is brand new this year, it is not yet clear what the processing of the full H-1B petitions will look like; however, typically, H-1B petitions are processed in the late spring and summer (sometimes

extending into the fall). H-1B cases that are approved will be valid starting no earlier than **October 1, 2020**.

### **Who Should Employers Consider Sponsoring for H-1B**

Any employees or potential employees who have not previously held H-1B status are subject to the H-1B cap. Common employee situations where H-1B sponsorship is recommended are:

- Employees in F-1 student status who are currently working pursuant to Curricular or Optional Practical Training.
- Employees in a dependent status (e.g. H-4, L-2, etc.) with work authorization. \*\*\*Note: The future of the H-4 EAD is very uncertain. We would recommend sponsoring any individuals working on H-4 employment authorization documents for H-1Bs this year.
- Employees in TN, E-3, or H-1B1 status. If you are considering sponsoring employees in TN, E-3, or H-1B1 status for lawful permanent residence (i.e. the green card), then we would recommend sponsoring these individuals for H-1B status. There is a temporary intent requirement for TN, E-3, and H-1B1 status, so these are not the most conducive US visas for individuals in the green card process. The H-1B allows for temporary and permanent intent to remain in the US, so it is a much more advantageous status to be in for employees pursuing the green card.

### **Timing**

Foster Garvey has knowledgeable legal professionals with many years of experience practicing federal immigration law. If you have questions about the upcoming H-1B cap, or immigration sponsorship/compliance issues in general, feel free to contact us, at [immgroup@foster.com](mailto:immgroup@foster.com).

**Tags:** H-1B cap filing, H-1B filings, H-1B visa, H-1B1 status, H-1B1 visa, U.S. Citizenship and Immigration Services, USCIS