OVERVIEW OF THE H-1B CAP LOTTERY

MELTZER HELLRUNG
IMMIGRATION SOLUTIONS

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The H-1B classification is for individuals sponsored by companies working in occupations that require a bachelor's degree or higher in a specific field or fields. The sponsored employee must hold the relevant degree (or its equivalent) that is necessary to work in the sponsored occupation.

THE JOB MUST MEET ONE OF THE FOLLOWING CRITERIA TO QUALIFY AS A SPECIALTY OCCUPATION:

⇨ Bachelor's or higher degree or its equivalent is normally the minimum entry requirement for the position.

⇨ The degree requirement for the job is common to the industry or the job is so complex or unique that it can be performed only by an individual with a degree.

⇨ The employer normally requires a degree or its equivalent for the position.

⇨ The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

Under the H-1B classification the sponsoring employer is required to pay at least the prevailing wage for the occupation in the geographic area where the employee will work, as certified by the Department of Labor.

The H-1B visa has an annual numerical limit "cap" of 65,000 initial H-1B visas each fiscal year. There are 20,000 "cap" slots for petitions filed on behalf of beneficiaries with a U.S. master's degree or higher are exempt from the cap. Additionally, H-1B workers who are petitioned for or employed at an institution of higher education or its affiliated or related nonprofit entities or a nonprofit research organization, or a government research organization are not subject to this numerical cap.

The USCIS opens the cap April 1st of each year for employment beginning October 1st of that same year. Once the USCIS allocates all of the petitions limited by the cap the USCIS ceases the acceptance of applications. The USCIS typically receive more than 65,000 petitions and conducts a lottery to determine which petitions are reviewed. There is an advance registration period where employers submit employees for selection in the lottery. The USCIS then collects complete petitions for individuals selected in that lottery.

Period of Approval: An H-1B approval is valid for up to three years. An employee can be in H-1B status for six years total (these six years are not specific to one employer). To extend a stay beyond six years the employee must be sponsored for a green card.

H-1B CAP LOTTERY APPLICATION PROCESS

(1) **Employer opens a case with Meltzer Hellrung**

IN ORDER TO GET STARTED, WE NEED THE FOLLOWING:

- ○ Name of candidate
- ○ Email address
- ○ Job title and job description
- ○ Offered salary
- ○ Work location, including name of client if location is a third-party work site
- ○ Resume

(2) **Meltzer Hellrung reaches out to the sponsored individual to complete an online questionnaire and provide the required documentation**

We will email the candidate with instructions to complete this step.

(3) **Meltzer Hellrung files a Labor Condition Application with the Department of Labor**

The Department of Labor takes up to eight calendar days to certify the Labor Condition Application (LCA). The employer must also complete a public access file based on the filing of the Labor Condition Application. This public access file includes notifying employees of the filing of the LCA and keeping documentation available regarding how the offered wage was determined. Meltzer Hellrung will provide complete guidance regarding the public access file.

As the LCA can only be filed 180 days in advance, it may be filed later to ensure longer validity of the H-1B.

(4) **Meltzer Hellrung will provide a preliminary list of employees to be sponsored in the lottery along with the necessary information for registration**

Once review is completed, Meltzer Hellrung will begin the registration process for the sponsored individuals. Each individual employee will have a registration submitted online, and a complete list of the individual registrations will be submitted to the employer.

⑤ Employer will complete review of registrations on the USCIS website

Meltzer Hellrung will provide employer with the registration code to use to review the registrations and electronically sign the G-28. If employer has not previously completed an H-1B registration, a new account will need to be created.

Once the review and electronic signature process has been completed, employer must notify Meltzer Hellrung so that the registration can be completed.

⑥ Meltzer Hellrung submits the registration and required registration fee

⑦ USCIS completes the lottery selection

A REGISTRANT'S USCIS ONLINE ACCOUNT WILL SHOW ONE OF THE FOUR FOLLOWING STATUSES FOR EACH REGISTRATION:

⇨ **Submitted:** A registration status may continue to show "Submitted" after the initial selection process has been completed. "Submitted" registrations will remain in consideration for selection until the end of the fiscal year, at which point all registration statuses will be Selected, Not Selected or Denied.

⇨ **Selected:** Selected to file an FY 2021 H-1B cap-subject petition.

⇨ **Not Selected:** Not selected for this fiscal year.
  • Please note that a registration will not reflect a status of **Not Selected** until the conclusion of the fiscal year. In the event that USCIS determines that it needs to increase the number of registrations projected to meet the H-1B regular cap or the advanced degree exemption allocation, USCIS will select from registrations held in reserve to meet the H-1B regular cap or advanced degree exemption allocation.

⇨ **Denied:** The same registrant or representative submitted more than one registration on the beneficiary's behalf for the same fiscal year. All registrations the registrant or representative submitted on behalf of the same beneficiary for the same fiscal year are invalid.

After the initial round of selections, if there are still any visas remaining from the allotted 65,000 visas, USCIS will conduct subsequent rounds of selections.

(8) If an H-1B beneficiary is selected, Meltzer Hellrung prepares to submit the H-1B petition to USCIS

We will send these forms to the employer and candidate for review.
The employer may choose to share these draft documents with the candidate.

(9) When all forms and letters have been finalized and all required documents have been provided Meltzer Hellrung will ship the completed petition to the USCIS

If the candidate is in the United States we can also submit an H-4 application for all dependents of the candidate. Please note we cannot submit an H-1B cap petition prior to selection in the lottery (after April 1st). There is a 90-day window to submit the petition after lottery selection.

(10) USCIS reviews the H-1B petition

Generally, the USCIS takes several months to review H-1B petitions. H-1B petitions are eligible for premium processing service, which requires the USCIS to adjudicate a petition within 15 calendar days. USCIS may not immediately approve a petition. The USCIS may first issue a Request for Evidence (RFE) seeking additional information before issuing a final decision. Should an RFE be issued the USCIS provides about three months to respond. We will send clients a list of documents needed to respond to an RFE, should one be issued.

(11) Decision / Approval of H-1B petition

If the petition is approved, USCIS will send the official I-797 approval notice to Meltzer Hellrung's office. We will forward that approval notice to the employer. If the candidate is already in the United States, that person's status will typically automatically change to H-1B.

If the petition is denied, we will discuss the options with the employer, including filing an appeal, motion, or refiling the petition. Motions and appeals must be submitted within 33 days of the denial.

(12) Acquire visa stamp at local U.S. consulate or embassy

This step is usually only first required for candidates not currently residing in the US. Please note a consular appointment is not needed if the person is currently in the U.S. and a change of status is approved. The consular appointment will only be needed when the individual leaves the US. In order to enter the United States in H-1B status the candidate must acquire an H-1B visa stamp from the local consulate or embassy. To do so, the candidate must take the following steps:

○ File form DS-160 online at **ceac.state.gov/genniv/**

○ Pay consular fee

○ Schedule an appointment

○ Attend the appointment with the following documents
   • I-797 approval notice
   • Copy of H-1B petition sent to the USCIS
   • Passport
   • DS-160 confirmation
   • Two most recent pay stubs or employment verification letter

(13) Enter U.S. and get I-94 from Customs and Border Protection

The I-94 is digital and can be found at **cbp.gov/i94**.

DOCUMENT REQUIREMENTS

Please note that we **do not** need originals of any documents for H-1B purposes. All documents should be scanned and uploaded to the candidate's Edge account.

DOCUMENTS REQUIRED FROM EMPLOYERS:

- ◯ Signed forms
- ◯ Recent financial documents, such as tax return, audited financial statement, SEC 10-K filing, or profit and loss statement
- ◯ Marketing materials describing the company
- ◯ Employment contract with candidate (if applicable)
- ◯ Statement of work or client contract if candidate will be placed at a client's work site

DOCUMENTS REQUIRED FROM ALL CANDIDATES:

- ◯ Diploma(s)
- ◯ Transcripts
- ◯ Education evaluation by professional evaluator if degree(s) were earned at educational institutions outside the U.S. Meltzer Hellrung LLC can help procure an appropriate evaluation if one is needed
- ◯ Translations of diploma(s) and transcripts if they are not in English
- ◯ Passport and current and prior visa stamps
- ◯ I-20 forms if candidate is/was a student in the United States
- ◯ EAD card(s) if candidate was ever issued an EAD
- ◯ I-797 approval notice if candidate previously had a visa application adjudicated by the USCIS
- ◯ DS-2019 if candidate was ever in J-1 status

DOCUMENTS REQUIRED FROM CANDIDATES CURRENTLY IN THE UNITED STATES:

- ◯ I-94 found at **cbp.gov/i94**
- ◯ Last two pay stubs if candidate is currently employed

DOCUMENT REQUIREMENTS (continued)

Please note that we **do not** need originals of any documents for H-1B1 purposes.
All documents should be scanned and uploaded to the candidate's Edge account.

DOCUMENTS REQUIRED FROM CANDIDATES CURRENTLY IN THE UNITED STATES AS A DEPENDENT:

- ◯ Spouse's passport
- ◯ Spouse's I-94
- ◯ Spouse's I-797 approval notice(s)
- ◯ Spouse's last two pay stubs
- ◯ Marriage certificate

DOCUMENTS REQUIRED FOR H-4 VISAS FOR DEPENDENT SPOUSE AND CHILDREN UNDER 21:

- ◯ Passport for each person, including U.S. visa stamps
- ◯ I-94 for each person
- ◯ I-797 notices, if any
- ◯ EAD card, if any
- ◯ Marriage certificate for spouse
- ◯ Birth certificate for child