

OVERVIEW OF THE H-1B CAP



MELTZER HELLRUNG
IMMIGRATION SOLUTIONS

OVERVIEW OF THE H-1B CAP LOTTERY

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(s). 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 an additional 20,000 "cap" slots for petitions filed on behalf of beneficiaries with a U.S. master's degree or higher that are exempt from the cap. Additionally, H-1B workers who are petitioned for or employed at an institution of higher education, its affiliated or related nonprofit entities, a nonprofit research organization, or a government research organization are not subject to this numerical cap.

The USCIS opens an online registration period in March for companies to submit the names of individuals they wish to sponsor for H-1B status. USCIS typically receives far more registrations than there are available H-1B visas and conducts a lottery to determine which individuals will have the opportunity to submit complete petitions to USCIS. Initial lottery selections are made by the end of March. Companies with selections must submit complete H-1B petitions to USCIS between April 1 and June 30. Should USCIS not have sufficient petitions to fulfill the available visas, the agency may conduct additional lotteries. Work authorization cannot begin before October 1st.

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 limited 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 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.

4 Employer will complete review of registrations on the USCIS website



Meltzer Hellrung will provide the employer with the registration code to use to review the registrations and electronically sign the G-28. If the 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, the employer must notify Meltzer Hellrung so that the registration can be completed.

5 **Meltzer Hellrung submits the registration and required registration fee**



6 **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, through September 30, at which point all registration statuses will be Selected, Not Selected or Denied.
- ⇒ **Selected:** Selected to file an 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 85,000 visas, USCIS will conduct subsequent rounds of selections.

7 **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.

8 Meltzer Hellrung files a Labor Condition Application with the Department of Labor



The Department of Labor takes up to seven 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.

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 that we cannot submit an H-1B cap petition prior to selection in the lottery until the submission period begins on 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 business 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 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 required for candidates not currently residing in the U.S. 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 U.S. 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 <https://i94.cbp.dhs.gov/I94/#/home>

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 Voyager 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 <https://i94.dhs.gov/I94/#/home>
- ☐ 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-1B purposes. All documents should be scanned and uploaded to the candidate's Voyager 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



MELTZER HELLRUNG

IMMIGRATION SOLUTIONS

Meltzer Hellrung challenges conventions to deliver better outcomes.

Founded with the belief that immigration can be a strategic advantage, we understand the complexities of immigration and respond with innovative solutions to meet business and talent needs. Our unique solution - skilled immigration professionals delivering responsive service to clients through Voyager, our proprietary immigration management platform, delivers the best immigration experience to companies, employees and their families.

