

OVERVIEW OF THE H-1B CAP REGISTRATION PROCESS



MELTZER HELLRUNG
IMMIGRATION SOLUTIONS

OVERVIEW OF THE H-1B CAP REGISTRATION PROCESS ("H-1B LOTTERY")

The H-1B nonimmigrant classification enables companies to sponsor individuals for temporary work authorization 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) 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 of 65,000 initial H-1B visas each fiscal year. There are an additional 20,000 H-1B visas for petitions filed on behalf of beneficiaries with a U.S. master's degree or higher. 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 more registrations than there are available H-1B visas.

USCIS has implemented a weighted selection process for determining which registrants may be sponsored for an H-1B visa. Instead of selecting H-1B cap registrations using a purely random lottery, as had been the case for many years, DHS has adopted a weighted selection process that generally increases selection odds for beneficiaries tied to higher wage levels (as measured by the Labor Department's **Occupational Employment and Wage Statistics (OEWS)** prevailing wage system). USCIS will enter registrations into the selection pool multiple times depending on the OEWS wage level for the job at the area of intended employment. The number of registrations submitted per applicant is based on the highest OEWS wage level the offered wage equals or exceeds for the job in the area of intended employment. Specifically, if the offered wage meets or exceeds:

OEWS Level I registrant entered	OEWS Level II registrant entered	OEWS Level III registrant entered	OEWS Level IV registrant entered
1 time	2 times	3 times	4 times

Each beneficiary is still only counted once toward the cap—this just changes the probability of selection. Initial lottery selections are made by the end of March. Companies with selected registrations must submit complete H-1B petitions to USCIS between April 1 and June 30. Should USCIS not receive sufficient petitions to utilize all available visas, the agency may select additional registrations. Work authorization cannot begin before October 1st.

Period of Approval: An initial 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 in the process of green card sponsorship.

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 foreign national 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 the employer with a preliminary list of employees to be sponsored in the lottery along with information relating to the OEWS wage level for each registrant**



Once review is completed, Meltzer Hellrung will begin the registration process for the sponsored individuals and determine the appropriate OEWS wage level for the job at the area of intended employment. Each individual employee will have a registration drafted online. A complete list of the individual registrations will be provided 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 Form G-28 to indicate that Meltzer Hellrung is representing them in connection with the registration. 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 submitted.

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



If the candidate is in the United States, we can also submit an H-4 application for all dependents of the candidate.

6 **USCIS completes the lottery selection process**



A REGISTRANT'S USCIS ONLINE ACCOUNT WILL SHOW ONE OF THE FOUR FOLLOWING NOTIFICATIONS 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 registrations will indicate either 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:** This typically occurs when the same registrant or representative submitted more than one registration on the beneficiary's behalf for the same job. In this scenario, all registrations the registrant or representative submitted on behalf of the same beneficiary in that fiscal year will be invalidated.

After the initial round of selections, if there are still any visas remaining from the allotted 85,000 visas, USCIS will select additional registrants until it has utilized all visas.

7

If the H-1B beneficiary is selected, Meltzer Hellrung prepares the H-1B petition for filing with 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), which contains employer certifications with respect to the wage offered and the job's working conditions. The employer must also maintain a public access file based on the filing of the LCA. This public access file includes evidence of the notice provided to employees of the filing of the LCA and documentation regarding how the offered wage was determined. Meltzer Hellrung will provide complete guidance regarding the public access file.

9

When all forms and support letters have been finalized, and all required documents have been provided, Meltzer Hellrung will submit the completed petition to USCIS



If the candidate is in the United States and has a spouse and children, we can also submit an H-4 change of status application for all dependents of the candidate as a separate service. Please note that we cannot submit an H-1B cap petition based upon selection in the lottery until the filing 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



Meltzer Hellrung will provide the employer with the registration code to use to review the registrations and electronically sign the Form G-28 to indicate that Meltzer Hellrung is representing them in connection with the registration. 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 submitted.

11

Decision / Approval of H-1B petition



If the petition is approved, USCIS will send the official Form I-797 approval notice to Meltzer Hellrung's office. We will forward the approval notice to the employer.

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

12 Acquire the H-1B visa stamp at a U.S. consulate or embassy in the applicant's country of nationality or residence



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 has been approved. The consular appointment will typically only be needed when the individual leaves the United States. Some applicants for an H-1B visa stamp may be required to pay a fee of \$100,000 before their visa can be issued. We will consult with you if it appears you are subject to this fee.

Applicants will also be required to provide information relating to their social media history as their activity will typically be reviewed as part of the security vetting process.

In order to enter the U.S. in H-1B status, the individual must acquire an H-1B visa stamp in their passport from a consulate or embassy in their country of nationality or residence. To do so, the individual 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 Form I-94 from Customs and Border Protection



The I-94 is digital and can be found [here](#).

DOCUMENT REQUIREMENTS



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 Voyager account.

DOCUMENTS REQUIRED FROM EMPLOYER:

- 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
- Form 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 ALL CANDIDATES CURRENTLY IN THE UNITED STATES:

- Form I-94 found [here](#)
- 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 Voyager account.

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

- Spouse's passport
- Spouse's Form I-94
- Spouse's Form I-797 notices 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
- Form I-94 for each person
- Form I-797 notices, if any
- EAD card(s), 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.

