

DECEMBER 12, 2019



## The 2020 H-1B cap season is upon us

By Jason Gerrol and Courtney New

For each fiscal year, there are only 85,000 new (or “cap-subject”) H-1Bs available: 65,000 for foreign nationals with a bachelor’s degree (or equivalent education) from a U.S. or foreign college or university, and an additional 20,000 for foreign nationals with a graduate degree from a U.S. college or university.

We believe that in Fiscal Year (FY) 2021, which begins October 1, 2020, the demand for cap-subject H-1Bs will again exceed the numerical quota, necessitating a lottery. In year’s past, only full and complete H-1B petitions received by U.S. Citizenship and Immigration Services (USCIS) during the first five business days of the H-1B cap filing period (e.g., April 1 to April 5) would have been included in the lottery. However, pursuant to a [January 2019](#) rule, USCIS will for the first time implement a pre-registration process with **an initial registration period expected to run March 1, 2020 through March 20, 2020.**

Under the new USCIS pre-registration process, employers (or their attorneys/agents) wishing to sponsor foreign national workers for initial cap-subject H-1B status will complete a pre-registration process that requests basic information about the sponsoring employer and the sponsored employee. USCIS will impose a \$10 fee per registration.

If a sufficient number of H-1B registrations are received during the initial registration period (March 1, 2020 through March 20, 2020), USCIS will proceed with randomly selecting the necessary number of registrations to meet the quota. Only if an employer’s registration is selected in the lottery will a full and complete H-1B petition (with the necessary [Labor Condition Application](#) and all USCIS filing fees) need to be submitted to USCIS within 90 days of being notified of selection.

Only registrations submitted during the registration period will be considered in the H-1B lottery. It is therefore imperative that employers identify candidates for H-1B sponsorship early, and begin working with immigration counsel as soon as possible to begin the process of evaluating candidates for H-1B sponsorship.

Employers should consider the following workers for H-1B sponsorship:

- Foreign national employees who are in F-1 student status and working pursuant to a period of Optional Practical Training (OPT) following completion of a U.S. degree program. OPT is generally limited to 12 months, although students who received a U.S. degree in science, technology, engineering, or math (STEM) discipline may be eligible for an additional 24 months of employment authorization. Employment beyond the period of OPT is typically contingent on securing an H-1B.
- Employees in L-1 status, whom you are sponsoring for lawful permanent residency (or will sponsor in the future), but who are unlikely to receive a “green card” within the allotted period of admission (i.e., five years if in L-1B status or seven years if in L-1A status). Your Nixon Peabody legal professional can help evaluate H-1B options for your L-1 employees.
- Employees who are currently authorized to work pursuant to the [final rule](#) providing employment authorization for certain H-4 dependent spouses. The current administration has announced its intention to rescind the rule allowing such employment for H-4 spouses.
- Any prospective employees who have not previously been counted against the H-1B numerical limits within the past six years (e.g., with another U.S. employer), and whom you wish to employ in the United States.

In short, the H-1B nonimmigrant visa classification is for foreign national workers in “specialty occupations,” meaning occupations that require the theoretical and practical application of highly specialized knowledge (generally by requiring at least a bachelor’s degree, or equivalent, in a specialized field relevant to the occupation). If you have questions regarding whether or not a particular position qualifies as a “specialty occupation,” or if your foreign national worker’s education qualifies, please let us know.

If you are interested in employing a foreign national in the U.S., your Nixon Peabody professional can discuss with you the H-1B process further as well as other work authorization options that may be available (e.g., O-1, etc.).

Author(s):

X	Jason M. Gerrol		Christopher R. Hinton
	Catherine I. Hunstad		Elizabeth H. James
X	Courtney H. New		Mary-Benham B. Nygren
	Nathan P. Warecki		
	Rachel S. Winkler		

Category(ies):

	Executive actions		Travel updates
	Law and policy updates	X	Nonimmigrant status
	Legislative and court updates		Immigrant status
	Reports and notices		Naturalization

Keyword(s):

	Executive actions		Nonimmigrant status	Immigrant status
	Law and policy updates		B visa	Diversity
	Legislative and court updates		E-1 visa	I-140
	Reports and notices		E-2 visa	Employment-based
	Travel updates		E-3 visa	Investor
	I-9		F-1 OPT	Extraordinary ability
	E-Verify	X	H-1B visa	Outstanding professor or researcher
	Litigation		H-2A visa	Multinational manager
	Family-based		H-2B visa	Advanced degree professional
	Immediate relative		J-1 visa	National interest waiver
	Other relative		J-1 waivers	Professional and skilled worker
	Fiancé(e)		L-1 visa	Unskilled worker
	Naturalization		O visa	Schedule A
	Employment Authorization Document		P visa	Labor certification
	Travel Document		TN visa	PERM
	DACA		LCA	Travel Ban
	ESTA visa waiver		Temporary Protected Status	Sanctuary City

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Jason Gerrol at [jgerrol@nixonpeabody.com](mailto:jgerrol@nixonpeabody.com) or 617-345-1372
  - Courtney New at [cnew@nixonpeabody.com](mailto:cnew@nixonpeabody.com) or 401-454-1116
-