



# H-1B Visa Lottery System Reversed

Registration requirement suspended until 2020

By Roy Maurer

January 31, 2019

Organizations that want to hire workers who hold H-1B visas will have to use a new online registration system as anticipated ([www.shrm.org/ResourcesAndTools/hr-topics/talent-acquisition/pages/uscis-proposes-changes-to-h-1b-visa-lottery-.aspx](http://www.shrm.org/ResourcesAndTools/hr-topics/talent-acquisition/pages/uscis-proposes-changes-to-h-1b-visa-lottery-.aspx)) under a just-released final rule—but not until 2020. Part of the rule will take effect this year, though: In the first round of selections, advanced-degree holders will join undergraduates in the lottery for 65,000 visas.

U.S. Citizenship and Immigration Services (USCIS) announced that based on public feedback, it has decided to postpone the implementation of the electronic registration requirement until the fiscal year (FY) 2021 filing period, according to the final rule issued today.

"Employers can breathe a sigh of relief—relief that USCIS did not rush through the registration requirement this year and that [the agency] made the announcement this early in the process, removing the uncertainty about what [it] planned to do," said Anantha Paruthipattu, founder and principal attorney at Paruthipattu Law Firm, based in Herndon, Va. "It's now OK to go ahead and start preparing for filing as usual for April 1."

Once the registration system is implemented, organizations that want to file H-1B cap petitions will first have to electronically register with USCIS. Randomly selected registrants will then be eligible to prepare and submit full H-1B cap-subject petitions. Currently, employers must complete lengthy applications for the visas and then hope to be chosen in the lottery, though most of them aren't selected.

"The current system is such an utter nightmare," said Becki Young, a partner at Grossman Young & Hammond, based in Silver Spring, Md. "I'm happy to see any attempt to resolve it."

USCIS Director L. Francis Cissna said that the new registration system, which is currently being developed and tested, will lower overall costs for employers and increase agency efficiency. The agency estimates that employers would save between \$47.3 million and \$75.5 million annually.

USCIS will announce the registration period at least 30 days in advance for each fiscal year it is required, beginning next year. Registration will last at least 14 days, and, once selected, employers will have at least 90 days to file petitions.

Young said that one concern remains: the potential for fraud and abuse. "Companies that currently flood the system with tens of thousands of frivolous petitions can still submit tens of thousands of frivolous registrations, at lower cost," she said.

USCIS said the final rule authorizes it to collect sufficient information for each registration to mitigate that risk, check for duplicate registrations submitted by the same petitioner, and match selected registrations with subsequently filed H-1B petitions. Each registration will require an attestation, and false attestations may be referred to federal law enforcement for investigation.

*[Visit SHRM's resource page on workplace immigration ([www.shrm.org/ResourcesAndTools/Pages/workplace-immigration.aspx](http://www.shrm.org/ResourcesAndTools/Pages/workplace-immigration.aspx))]*

### Lottery Reversal Explained

USCIS is moving forward with its plan to reverse the order of the regular and advanced-degree lotteries for this year's filing season, beginning April 1. The change is expected to result in more than 5,300 additional H-1Bs allocated to individuals with U.S. advanced degrees and decrease the number of visas to other petitioners with U.S. bachelor's degrees or foreign advanced degrees.

Previously, the government conducted a lottery to award visas to 20,000 advanced-degree holders first. Those who weren't chosen then got a second chance with the other H-1B petitions in a larger 65,000-visa lottery. This year, instead of conducting the advanced-degree lottery first, USCIS will run the regular H-1B cap lottery to meet the 65,000-visa quota with all advanced-degree earners included. It will then put the remaining applicants with U.S. master's degrees or higher into the separate lottery for 20,000 visas.

The agency said that reversing the cap selection order will "help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries," as well as cut down on the number of visas awarded to employees of foreign outsourcing firms, whose staff tend not to have U.S. advanced degrees.

"The policy goal is to protect wages for U.S. workers," Young said. "The theory is that entry-level H-1B workers drive down wages for U.S. workers, so if you increase the education level in the talent pool, that should drive up wages for U.S. workers."

Paruthipattu thought it troubling that USCIS was making a policy judgment about who employers should be hiring. "I'm not sure that the government should be taking over the hiring decisions of U.S. employers," he said.

### Employer Takeaways

Both attorneys recommended that organizations continue to proceed with the standard filing process for this year's cap season.

Young said that while it's "probably a little late to still be looking for candidates for this year's cap season, it may be better to consider people with U.S. advanced degrees."

She added that "if you are still thinking about filing this year, get started immediately. If you start your case later in February, you will be rushing to get it done."

Contact Us ([www.shrm.org/.../about-shrm/Pages/Contact-Us.aspx](http://www.shrm.org/.../about-shrm/Pages/Contact-Us.aspx)) | 800.283.SHRM (7476)

© 2019 SHRM. All Rights Reserved

SHRM provides content as a service to its readers and members. It does not offer legal advice, and cannot guarantee the accuracy or suitability of its content for a particular purpose.

Disclaimer ([www.shrm.org/.../about-shrm/Pages/Terms-of-Use.aspx#Disclaimer](http://www.shrm.org/.../about-shrm/Pages/Terms-of-Use.aspx#Disclaimer))