

# Transcending Borders<sup>SM</sup>

## H-1B Cap Registration is Here

It's time to prepare for the FY2023 H-1B cap visa lottery!

The FY2023 H-1B Cap registration period runs from March 1, 2022 through March 18, 2022.

What you can do now:

- Review your roster of foreign national employees – focusing on:
  - Any employees with F-1 CPT or OPT (even if they have a year or two of STEM OPT left, we recommend applying annually to get the most “bites at the apple”)
  - Any employees in other non-immigrant statuses that expire before 10/1/2023 (which will be your next opportunity to sponsor cap-subject H1Bs)
  - Any former employees you would like to bring back/ potential new hires

Contact our firm (sooner is better) for a complimentary 15-minute consultation to discuss next steps. **Our deadline to initiate a FY2023 case is February 22.**

[Schedule a Consultation](#)

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**Policy Changes Benefit STEM Fields**

In January, the Biden administration **announced new policies** aimed at attracting to the U.S. international graduates and professionals who specialize in science, technology, engineering and mathematics (STEM). These changes are part of Biden’s efforts “to strengthen [the U.S.] economy and technological competitiveness.” New initiatives include but are not limited to:

- Expansion of the STEM Optional Practical Training (OPT) program to include 22 new fields of study. The program permits F-1 students earning Bachelor’s, Master’s, and Doctorates in certain STEM fields to remain in the United States for up to 36 months to complete Optional Practical Training after earning their degrees. The newly added fields include:
  - *Bioenergy; Forestry, General; Forest Resources Production and Management; Human Centered Technology Design; Cloud Computing; Anthrozoology; Climate Science; Earth Systems Science; Economics and Computer Science; Environmental Geosciences; Geobiology; Geography and Environmental Studies; Mathematical Economics; Mathematics and Atmospheric/Oceanic Science; Data Science, General; Data Analytics, General; Business Analytics; Data Visualization; Financial Analytics; Data Analytics, Other; Industrial and Organizational Psychology; Social Sciences, Research Methodology and Quantitative Methods.*
- Several Department of Homeland Security (DHS) updates to policies regarding the O-1A visa for “extraordinary ability” in the fields of science, business, education, or athletics. These updates include a chart describing examples of evidence that may satisfy O-1A requirements and considerations taken in evaluating evidence. The changes also give examples of comparable evidence employers may provide to support an O-1A petition. The update also stresses that if a petitioner finds that a particular criterion does not readily apply to their occupation, they may submit evidence that is of comparable significance to that criterion to establish sustained acclaim and recognition.
- Changes to the way USCIS adjudicates National Interest Waivers (NIW) and employment-based permanent residence for foreign nationals in STEM fields. USCIS updated its policy manual to clarify how the NIW can be used for persons with advanced STEM degrees and entrepreneurs, as well as the significance of letters from governmental and quasi-governmental entities.

On February 7<sup>th</sup>, The U.S. House of Representatives passed the **America COMPETES Act**, intended to boost U.S. global competitiveness. **The Act contains** two major immigration reforms: (1) a new W visa category for startups would be available to foreign entrepreneurs and, (2) a direct path to permanent residence for immigrants who earn a Ph.D. in a STEM field in the U.S.

**Please note this is proposed, not final, legislation.** While these reforms are compelling, the Bill still needs to pass in the Senate, which is **expected to be challenging**.

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## **DHS Enforcement Shifts to Employers**

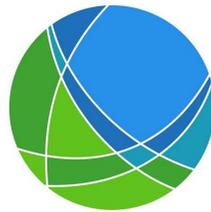
The Department of Homeland Security (DHS), in compliance with the **new Guidelines** for Enforcement of Civil Immigration Law enacted by the Biden administration, will shift their focus from targeting unauthorized employees to placing increased scrutiny on employers’ compliance with hiring and labor safety practices. The **aim of these policies** is emphasizing DHS’s role in

“protect[ing] workers as well as legitimate American businesses,” according to Secretary Alejandro Mayorkas. Using audits as a primary enforcement mechanism, DHS will ensure employers have timely and correctly completed I-9 (Employment Eligibility Verification) for all their employees. **DHS** will also be performing worksite visits in connection with E-3, H-1B and L-1 employees to ensure compliance with work retention requirements and terms of employment obligations.

These guidelines signal the end of mass worksite raids that targeted immigrant workers rather than employers. The administration has also expressed a willingness to use prosecutorial discretion (i.e., not pursuing deportation or other immigration penalties) to encourage undocumented workers who were victims or witnesses of workplace exploitation or abuse to testify against their employers.

Grossman Young has substantial expertise in I-9 compliance and workplace enforcement and is available to consult with employers on these issues.

*By, Genesis Iscoa, Legal Intern*



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