

U.S. Department of Homeland Security Proposes Changes To The H-1B Work Visa Program

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01.15.2019

Practice Areas

Business Immigration

On November 30, 2018, the U.S. Department of Homeland Security (DHS) announced a notice of proposed rulemaking that seeks to make significant changes to H-1B cap petitions, commonly known as the H-1B Visa Lottery.

DHS' proposal is comprised of two components. First, employers seeking to file H-1B cap subject petitions would be required to register electronically with the U.S. Citizenship and Immigration Services (USCIS) in advance during a designated registration period. Employers would be required to identify the foreign national it intends to hire, as well as provide other information regarding both the employer and the foreign national beneficiary. USCIS would then conduct the annual H-1B lottery from the pool of timely filed electronic registrants.

The second proposed change would reverse the order by which the agency selects H-1B petitions under the H-1B cap and the advanced degree exemption. Currently, the H-1B cap is set at 85,000 with an additional 20,000 set aside for recent foreign student graduates with a master's degree or higher from a U.S. institution of higher education. Under the current lottery process, the advanced degree exemption beneficiaries are selected before the H-1B cap beneficiaries.

The proposed rule would reverse the selection order and count all applicants towards the 85,000 H-1B cap first. Once this number is reached, USCIS would then select applicants towards the advanced degree exemption. USCIS projects that this change would result in a 16% increase

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in the number of selected beneficiaries with a U.S. master's degree or higher.

USCIS describes the proposed changes to the H-1B visa program as supportive of President Trump's Buy American and Hire American Executive Order to "suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries."

Additionally, USCIS has indicated it would like to finalize and implement the regulation and the electronic registration system in time for the opening of the upcoming fiscal year 2020 H-1B cap filing season on April 1, 2019.