



## H-1B Filing Season — What the CEO Should Know

By: **Delisa Bressler**

The H-1B filing season for new petitions starts on April 1 and lasts for only five business days.

H-1B is a non-immigrant visa in the United States under the Immigration and Nationality Act, section 101(a)(15)(H). It allows U.S. employers to temporarily employ foreign workers in specialty occupations.

The five-day period is because the annual H-1B quotas — “regular cap” and “master’s cap” — total only 85,000, and generally they are both reached within the first week of filing.

When that happens, U.S. Citizenship & Immigration Services (CIS) applies a random numeric selection process, the H-1B “lottery,” to petitions received in the first *five business days*, in order to select which petitions will be considered for approval.

The CIS first conducts a master’s cap lottery to select up to 20,000 filings on behalf of those with U.S. master’s degrees or other U.S. advanced degrees. The CIS then conducts a second lottery to select the remaining petitions. Petitions not selected under the master’s cap will have a second chance at selection under the regular cap.

Not every petition filed will be accepted, and not every petition accepted will be approved. And because the next opportunity to file is over a year away, the pressure is on to get it right the first time.

### **Start early**

“Getting it right” starts with empowering managers and HR teams to take action early. HR teams and group managers must identify H-1B candidates well before April 1 and quickly secure the necessary approvals within the organization to begin the H-1B process.

F-1 students are obvious candidates, but employers should take a closer look and also consider professionals in TN, E-3, E-1, E-2 or L-1B temporary status. Even L-2, H-4 and E spouses working in professional positions based on temporary work authorization could benefit from H-1B status.

By filing H-1B petitions for key employees on these more temporary visas, the company promotes employee retention and paves the way for possible pursuit of longer-term work authorization through the permanent residency process.

## **Emphasize quality**

After identifying candidates, the HR team will need to work closely with qualified immigration counsel who can report on milestones, target completion dates and case progress, as well as prepare and file the expected volume of petitions on time.

While the lead-time for preparing a single H-1B petition may be only two weeks, companies filing dozens or even hundreds of petitions should aim for a much earlier start. Some cases may require additional document collection or more time to prepare legal arguments supporting eligibility.

The best programs allow plenty of time for “quality control” review of each H-1B filing before the courier package is finally sealed.

## **Set expectations**

It is important to understand that even a timely filed and approvable petition could be rejected under the H-1B quota. Unfortunately, the lottery doesn’t discriminate based on how integral a key employee may be to your organization.

This means your HR team and group managers should have a plan for addressing rejected filings with immigration counsel. Each case should be managed to minimize any gaps in an employee’s work authorization.

## **Prepare for next year**

Finally, after the frenetic pace of H-1B filing season settles, HR teams and group managers should review both the company’s and immigration counsel’s management of the process. Companies should take this opportunity to make any required program changes or timeline adjustments to be even better prepared for next April 1.

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