

Deadlines for H-1B work visas for next year coming soon

November 2017



All aboard! The H-1B Lottery Train coming soon

Speculations have begun for the next H-1B lottery season. For positions that commence on October 1, 2018, applications are due in early April 2018. This is part of the fiscal year 2019 cap season. You may file an H-1B petition no more than six months before the employment start date requested for the beneficiary.

Every year, during the month of April, the year's pool of applicants enter into a lottery for these work visas.

The basics of H1-B specialty occupation work visas

The job must meet one of the following criteria to qualify as a specialty occupation:

- Bachelor's or higher degree or its equivalent is normally the minimum entry requirement for the position
- The degree requirement for the job is common to the industry or the job is so complex or unique that it can be performed only by an individual with a degree
- The employer normally requires a degree or its equivalent for the position
- The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

For you to qualify to accept a job offer in a specialty occupation you must meet one of the following criteria:

- Have completed a U.S. bachelor's or higher degree required by the specific specialty occupation from an accredited college or university

- Hold a foreign degree that is the equivalent to a U.S. bachelor's or higher degree in the specialty occupation
- Hold an unrestricted state license, registration, or certification which authorizes you to fully practice the specialty occupation and be engaged in that specialty in the state of intended employment
- Have education, training, or progressively responsible experience in the specialty that is equivalent to the completion of such a degree, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.**

Start-up H-1Bs difficult but not impossible

Generally, two years of business tax returns should be on hand to demonstrate to [USCIS](#) that the employer has the financial ability to pay the full-time H-1B employee. However, start-up companies can also demonstrate ability to pay by using customer contracts and a solid business plan and financial projections. Investment contracts and bank documents showing availability of sufficient funds are critical to start-up H-1B cases. H-1B employees must not also be the owners of the petitioning company.

What forms need to be completed

The prospective employer must file an approved Form ETA-9035, Labor Condition Application (LCA), with the Form I-129, Petition for a Non-immigrant Worker. It is recommended that the employer and employee start the process early to make sure the employers federal tax ID is registered with the Department of Labor to minimize delays in processing the LCAs. Since the USCIS uses Validation Instrument for Business Enterprises ([VIBE](#)) Program to verify employer credentials it is recommended that prospective petitioners become familiar with this.

Currently, Dun & Bradstreet ([D&B](#)) is the independent information provider for the VIBE program. It is strongly recommended that employers register with D&B.

Do all employers have to participate in the lottery?

Certain employers do not have to participate in the lottery. H-1B petitions filed by non-profit research organizations or governmental research organizations, as defined in 8 CFR 214.2(h)(19)(iii)(C), are exempt from the H-1B cap. A non-profit research organization is an organization that is primarily engaged in basic research and/or applied research.

What to expect in 2018?

This coming year we are expecting 65,000 regular quota visas to be handed out and 20,000 master's quota visas to be awarded. The United States Citizenship and Immigration Service (USCIS) announced in early October 2017 that premium processing of all H-1B petitions had resumed. This will allow employers to get an approval in as little as two weeks.

Congress and Senate have not modified the H-1B program despite much press about possible legislative and regulatory changes to the popular visa program. There is a push by companies and employers to expand the current program to include as many as 180,000 H-1B recipients. [\[1\]](#) Until that happens, however, we must be aware of deadlines and prepare for a competitive season in advance.

Aspiring employees and their employers should start preparing their applications at the start of the new year 2018. If you have been unsuccessful in years past, now may be the time to apply.

The USCIS begins accepting applications 6 months before the start of the next fiscal year. That means if you are applying for the 2019 year, you'll want to submit your application package early by the first week of April. In years past, the quota was met within one week. Once USCIS reaches a sufficient number H-1B petitions, it will stop accepting new applications.

The next enrolment period begins April 2nd and lasts five days. After April 6th, the lottery selection takes place if the cap is reached. Typically, this occurs the second week of April.

USCIS received 199,000 H1-B applications this year [\[2\]](#) so you can expect the cap will be reached for the 2019 quota as well. Once the cap is reached, the lottery system is initiated. While some employers and employees may feel hesitant to apply for the H1-B visas because of recent

negative press reports, we still feel there will continue to be strong demand. Some employers are exploring other options such as the L and the E visa where available.

Once an H-1B holder is admitted, several opportunities become available for H-1B lottery winners. He or she may apply to transfer to another H-1B job, extend the amount of time in country, change the terms of employment, or work concurrently in a second H-1B position.

Premium processing has resumed this season. In 2017, premium processing was suspended temporarily for certain classifications of H-1B visa applicants such as new, transfer, extension, and amended petitions. The expedited 15-day processing is available for a fee of \$1,225. The 15-calendar day period will begin when USCIS receives the current version of Form I-907, Request for Premium Processing Service, at the correct filing address noted on the form.

For regular processing, it could take months to receive a decision. Many applicants from April 2017 still do not have decisions as of October 2017.

It's helpful to hire an immigration law firm to guide you through the process. USCIS may request additional information that can be complex and challenging if you are not prepared for it. You don't want to waste your time preparing an application that will be rejected for something that was foreseeable. It's important to begin your application early in case any issues arise that could delay or derail the process. Your H-1B visa may require correspondence from Department of Labor, Department of State, or Department of Homeland Security so you need to make sure to allow for enough time to process requests from these bureaus.

Updates to the H-1B for the 2018/2019 year

Nothing has been published regarding any changes to the H-1B visa program yet. This current administration and the political climate in Washington suggests changes could be coming soon but we have yet to see anything concrete. We will be sure to keep you up to date and watch the political climate closely.

The biggest employers of H-1B workers are Silicon Valley and professional services companies. That's why you'll see a lot of news about tech visas and the change they want to implement in Washington, DC. Since taking office, the Trump administration has implemented tighter controls on the H-1B program. [\[3\]](#) Many employers face added burdens in proving they are not misusing the H-1B program. [\[4\]](#)

Did you know? Exemptions and fees

Another interesting fact about the H-1B program are the exemptions. Did you know universities, non-profit research institutions affiliated with a university, and government research institutions are exempted from the cap? There are databases available of H-1B visa employers for those seeking a sponsor. [5] For a non-profit to qualify as a cap-exempt entity, it must share ownership through a board and be registered as a not for profit institution. This is a great resource for potential candidates seeking sponsorship. Several rules exist to prevent exploitation of exemptions so check with an immigration attorney first. You are not encouraged to file two H-1B petitions simultaneously. This is considered fraud, and duplicate petitions will be thrown out.

Students on F-1 visas that are graduating the next year are encouraged to use this tool to search H-1B employers to strategically plan their work-stay in the United States. Different rules apply for applicants outside the country. If you are applying for an exemption and you are outside the country, you need to a.) have been working in the U.S. sometime within the last six years and b.) not have stayed the full duration of your visa. If you have gaps in employment, additional documentation is required and you are encouraged to use premium processing if it is available. For now, premium processing is not yet available for the 2018 season.

A recent study [6] found that employers typically pay between \$1,710 and \$6,460 per H-1B visa. Pew Global Research has published some additional facts about the H-1B visa. Over half of all applicants were in STEM fields. Over half of all applicants originated from India or China. Employers with the highest number of H-1B petitions were located in New Jersey, California, Texas, and New York.

Mohammad Ali Syed
+1 (202) 5031425
mohammad.syed@riaabg.com
www.riaabarkergillette.com



Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

