

NPZ LAW GROUP Webinar: **H-1B Visa LOTTERY 2024-2025**

Presented by:

David H. Nachman, Esq.

Ludka Zimovcak, Esq.

**Nachman, Phulwani, Zimovcak (NPZ) Law Group, P.C.
(VISASERVE)**

Immigrant vs. Nonimmigrant Visas

No Status	Nonimmigrant	Immigrant (Green Card)	Naturalization
DACA	B Visitors	EB-1 Outstanding Research & Professors	After 3 or 5 years
U Visa	E Treaty Trade / Investor	EB-2 Advanced Degree Professionals	
245(i) benefit	F Student	EB-3 Bachelors Degree & Skilled Workers	
Asylum, etc.	H Specialty Workers	EB-4 Religious Workers	
	J Trainees	EB-5 Investors	
	L Intercompany Transferee	Family Based Immigration	
	O Extraordinary Ability		
	P Performing Artists		
	R Religious Workers		
	TN For Canadian & Mexican Nationals (not dual intent)		

H-1B Visas

Temporary Professional Visas

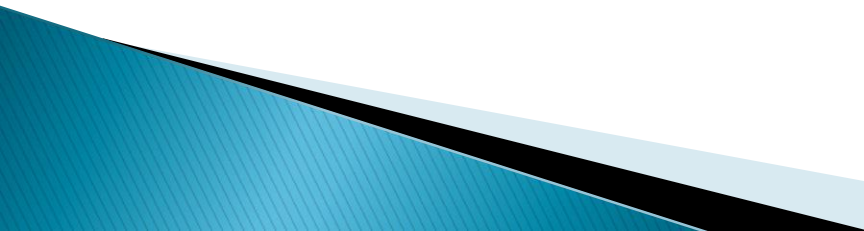
- ▶ For Professional-Level workers who are coming to the US to work for a US employer in a specialty occupation
 - Alien must possess at least the equivalent of a US Bachelor's Degree AND
 - Job offer must require at least a Bachelor's Degree
 - “Three for One Rule”- 3 years of work experience can be substituted for 1 year of academic study in order to equate the work experience to a Bachelor's Degree

Examples of Specialty Occupations

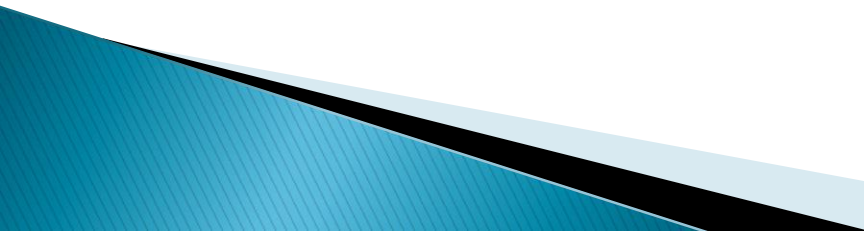
- ▶ Some occupations in the regulations:
Chemist, biologist, engineers, physicists, software developers, system analysts, accountants, economists, teachers, architects, lawyers, graphic designers, among others.

If an occupation is not in the regulations, is a Bachelor's Degree normally required?

Cap on H-1B Visas

- ▶ Numerical Limitation: 65,000 annually.
 - ▶ Additional 20,000 visas for those with US advanced degrees.
 - ▶ Cap was met during the registration period for FY 2024 receiving over Approximately 780,884 registrations for both advanced and Bachelor's degrees.
 - ▶ Roughly 61% of all registrations were for prospective beneficiaries with U.S. advanced degrees.
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Who Should Apply for H-1B Cap case?

- ▶ OPT (regular or STEM)
 - ▶ F-1 with equivalent US Bachelor's degree
 - ▶ TN under USMCA
 - ▶ Employees from overseas with equivalent US Bachelor's degree
 - ▶ H-4s, L-2s,
 - ▶ L-1A or L-1B
 - ▶ Possibly - DACA / TPS / Humanitarian Programs
 - ▶ Previous H-1B want-to-be.
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The H-1B Lottery Process

- ▶ Need to identify people early
- ▶ Master's cap and regular cap numbers
- ▶ Registration process
 - Electronic submission using USCIS online account
 - \$10 fee for each beneficiary (for this year)
 - March 6 – March 22 (2025 H-1B Lottery)
- ▶ Post-registration process
 - Notification of selection through online account
 - File petitions only for selected beneficiaries
- ▶ Second Lottery?

Filing and Start Date

- ▶ March 6 – March 22 H-1B 2025 registration
- ▶ April 1st filing for cap cases
- ▶ October 1st – H-1B start date
- ▶ **Cap-Gap** work through October 1st for pending or approved H-1B Visas

Fiscal Year 2025 H-1B Cap Season: H-1B REGISTRATION FINAL RULE

- ▶ **Introduction of Beneficiary-Centric Selection Process:**
 - Selections based on individual beneficiaries instead of registrations.
 - Aims to ensure equal selection opportunity for all applicants.
- ▶ **Start Date Flexibility:**
 - Allows for filing with start dates after October 1, maintaining consistency with current policy.
- ▶ **New filing fees will go into effect on April 1, 2024**
 - \$780 for employers with 26 or more F/T employees.
 - \$460 for small employers (25 or less) and nonprofit organizations

Fiscal Year 2025 H-1B Cap Season: H-1B REGISTRATION FINAL RULE

- ▶ **Asylum Program fee:**
 - \$600 for employer with 26 or more F/T employees
 - \$300 for small companies
 - \$0 for nonprofit organizations
- ▶ **Increased Premium Processing fee \$2,805**
- ▶ **New Form I-129 as of April 1, 2024**
- ▶ **Online Filing Launch:**
 - Introduction of online filing for Form I-129 and associated Form I-907 for non-cap H-1B petitions starting February 28, 2024 and April 1, 2024 for H-1B Cap.

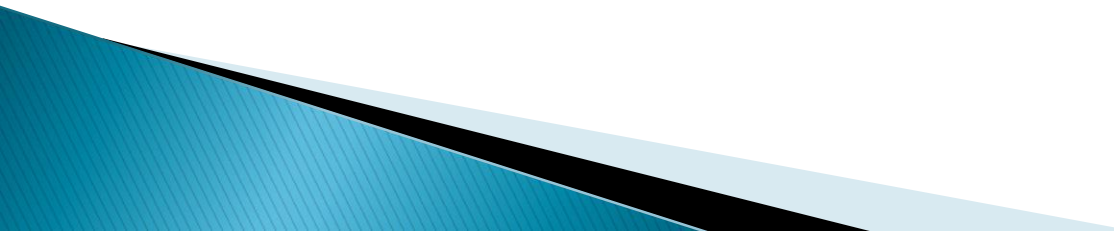
Period of Validity

- ▶ Generally valid for a total of 6 years
- ▶ Time spent outside of the US can be recaptured
- ▶ Some exceptions available where additional time in H-1B status will be granted in 3 years increments beyond the 6 years period (AC-21 - I-140 Approval or GC pending for 365 days+)

Employer Specific

- ▶ H-1Bs are employer specific, but
 - Concurrent H-1Bs are permitted
 - H-1Bs are portable
 - Part-time employment is permitted

Exemptions from the H-1B cap

- ▶ Current H-1Bs seeking extensions or transfers to another employer (the cap limits the number of requests for initial employment that CIS may approve each year)
 - ▶ Statutorily exempt employers such as institutions of higher education and nonprofit research organizations
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The Labor Condition Application (LCA)

- ▶ Attestations made to the US Department of Labor (DOL) by an employer seeking to hire employee(s) as an H-1B worker(s).
- ▶ Sets forth the number of workers sought, the occupational classification, the prevailing wage, the method used to determine the prevailing wage, and the actual wage rate paid
- ▶ LCA must be available for public inspection within one day of filing the LCA with the DOL

Prevailing Wage: What factors designate Level 1 Through Level 4?

Jobs are ranked from level one to level four, four being the highest. Let's look at what these levels mean:

- ▶ **H-1B Wage Level 1** is the entry-level wage for H-1B workers who have a basic understanding of performing the job's duties. The level one wage is in the 17th percentile.
- ▶ **H-1B Wage Level 2** H-1B workers with relevant education and experience . Level two corresponds to the 34th percentile.
- ▶ **H-1B Wage Level 3** makes up the 50th percentile. This H-1B wage level is given to experienced employees This wage level may include management work.
- ▶ **H-1B Wage Level 4** is the final level and corresponds to the 67th percentile of H-1B workers. The level four H-1B wage is reserved for competent workers who are experts in their field and typically comes with high-level management responsibilities.

Public Access File (PAF)

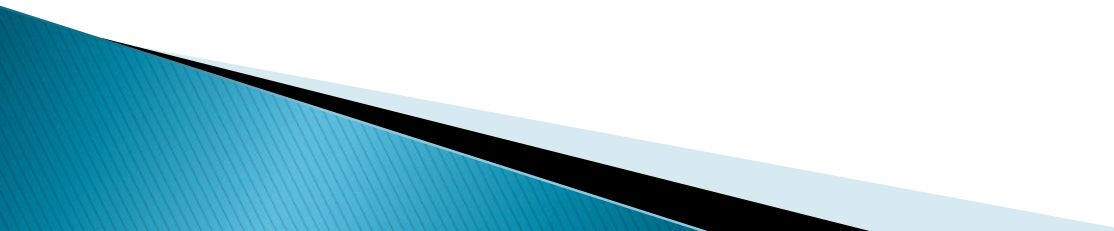
Documents Included in the Public Access File (PAF) which must be kept on premises following filing of the LCA with the DOL:

- ▶ Cover Sheet
- ▶ Certified LCA
- ▶ Prevailing Wage Documentation Memo
- ▶ OFLC Wage Level Information document (FLCdatacenter.com)
- ▶ Explanation of Use of OES
- ▶ LCA Posting Memo
- ▶ Employer's Actual Wage Worksheet Memo
- ▶ Employer's Wage Rate Worksheet Memo
- ▶ H-1B Employer Obligations
- ▶ Beneficiary Letter

H-1B Employer Obligations

- ▶ Post LCA at the appropriate worksite.
- ▶ Have PAF documents 1 day after LCA is filed with DOL
- ▶ Attestations on LCA honored
- ▶ Return Transportation if relationship terminated
- ▶ Pay H-1B the Prevailing Wage to the proposed beneficiary
- ▶ Amend H-1B if material change in employment (job location, wage, FT/PT, significant change in job duties) – *Simeio case*

Form I-9 – Things HR Managers Should know

- ▶ What to do for I-9 in H-1B Cap-Gap
 - ▶ What to look at for employment verification on I-9 for H-1B
 - ▶ I-9 for use of Portability Provisions of AC-21
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H-1B Alternatives & Strategic Advice

- Set expectation with employer earlier in the new year.
- Prepare Plan-B (backup plan) - H-1B Alternatives
 - ▶ E Visa
 - ▶ L Visa
 - ▶ O Visa
 - ▶ P Visa
 - ▶ R Visa
 - ▶ B-1 Visa
 - ▶ TN Visa
 - ▶ E-3 Visa
 - ▶ U Visa
 - ▶ I Visa
 - ▶ J Visa

Considerations:

- ▶ Obtain information and do an upfront analysis.
- ▶ Prepare for possible RFE – Requests for Evidence from USCIS.
- ▶ Speak to Clients (HR and Beneficiary) about
 - Cost
 - Timing
 - Fallback positions
- ▶ H-1B Alternatives that may be available
 - Consider filing before H-1B lottery.

Questions?

Please contact our office for further information:

info@visaserve.com

201-670-0006 (ext 104)

<http://www.visaserve.com>

Thank You

