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***The Upcoming H-1B Cap Season – Buckle Up for Turbulence***  
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Experienced fliers board an aircraft with certain expectations. After boarding, it should roll around the tarmac, straighten out, and then launch down the runway. Smooth flights, from wheels up to landing, are not very notable. However, when the pilot alerts passengers with the request, “please remain in your seats with your seatbelts fastened, we are going to experience a *bit* of turbulence,” it might be a wild ride. During those [times](#), when it feels like your seat drops and rises a few feet in a matter of seconds, all one can do is follow the crew’s instructions and hope for the best.

Turbulent times may lie ahead for prospective H-1B visa<sup>1</sup> employers and employees due to the USCIS’s recently-announced [changes](#) to next year’s selection process.<sup>2</sup>

The process for selecting H-1B visa “cap” or “quota” petitions has been consistent since 2007. Employers would make decisions about proceeding with sponsorship of an individual before mid-March, prepare a complete visa petition, and then submit it during the first week of April. Then, the USCIS would assign a number to each submitted petition and conduct random selections of approximately 85,000 submissions for processing. The unselected cases would then be returned by mail over a two-month time period with a one-page notice.

The new process for prospective H-1B petitioners will be as follows:

- *Between March 1<sup>st</sup> and March 20<sup>th</sup>, an employer or its representative can submit an electronic registration listing a specific individual, along with a \$10.00 registration fee.*
- *If the number of registrations exceeds the number of available H-1B visas, then the USCIS will conduct a random selection process.*
- *Employers will be notified of selected registrations and can then move forward with filing cap/quota H-1B visa petition within a 90-day time period.*

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<sup>1</sup> The H-1B visa permits organizations to employ foreign workers for professional-level, “specialty occupations” requiring at least a specialized U.S. bachelor’s degree. There is an annual, basic quota of 65,000 visas and an additional quota of 20,000 for individuals with at least a U.S. master’s degree.

<sup>2</sup> Employees of institutions of higher education, non-profits adequately affiliated with such institutions, and non-profit research organizations can file quota-exempt petitions. Similarly, an individual granted a quota-subject H-1B in the last six years is generally exempt from the quotas (ex. existing employees in H-1B visa status).

Without a doubt, the number of registrations will exceed the number of available visas, but no one knows how many more requests will be submitted in the new system. The [final regulation](#) includes extensive discussion of concerns associated with “speculative” or “frivolous” registrants. To address them, the USCIS stated it will require registrants attest to the accuracy of the submission and intent to submit an H-1B visa petition, with possible referrals for investigation of suspicious activity.

Questions abound about the USCIS’s ability to fulfill its promise of a functional system. The agency’s past efforts with electronic filing have been wanting. The new system must complete the following functions, likely over 200,000 times, within a 31-day period: Register employers and agents; Accept registration requests on March 1<sup>st</sup>; Remain operational through March 20<sup>th</sup>; Process registration fees; Perform the selection processes of U.S. Master’s and Regular H-1B registrations; Notify selected and unselected registrants; and “Link up” with USCIS adjudicators so they can readily identify and confirm the validity of selected registrations.

Employers should continue to do what they have done in past years, but on a more expedited basis, given the March 1<sup>st</sup> to March 20<sup>th</sup> submission period. Employers should identify candidates in need of H-1B sponsorship, if possible, **by February 1st**. Employers should consider sponsorship for the following individuals:

- Current employees on Optional Practical Training (OPT),
- Students on Curricular Practical Training (CPT),
- Working professionals located outside of the U.S.,
- Employees with H-4 dependent work authorization (*Code C26*),
- Those with STEM OPT, regardless of expiration dates, and
- L-1 workers employed outside of the employer’s organization.

The priority should be to make early decisions about moving forward with the process. Prior to registration, prudent employers should work with experienced legal counsel to review the feasibility of each prospective petition, to confirm that: a) the employer is able to sponsor an H-1B employee and pay the required wage, b) the position meets the ever more stringent requirements of an H-1B “specialty occupation,” and c) the intended H-1B employee possesses at least a bachelor’s degree, or the equivalent, in an acceptable field.

Boarding starts in 80 days. Like it or not, we have a recently-constructed, self-certified airplane with an inexperienced pilot and the weather forecast is not ideal. One can only prepare and hope for the best. Enjoy the “flight.”

*If you or your organization has any questions about H-1B visa sponsorship, please contact Tony Weigel by phone at 816.516.6555 or by e-mail: [tony@weigellawllc.com](mailto:tony@weigellawllc.com).*