

US IMMIGRATION UPDATE :

H-1B, H-4 and L-1 workers for Multinational employers

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Immigration has been a major source of population growth and cultural change throughout much of the U.S. history. In absolute numbers, the United States has a larger immigrant population than any other country.

Employers who are interested in hiring foreign nationals to work in the U.S will be required to confirm employment eligibility during the first three days of hire. For some potential foreign national hires, the employer must “sponsor” the individual and obtain U.S. Government approval before the foreign national may be hired, while others have already obtained authorization to work, based on their current nonimmigrant visa status.

In this e-book we summarize all information discussed in our webinar : the latest updates for Multinational Employers hiring H-1, H-4 and L-1 Workers. We also discuss the current situation on RFE's and compliance matters.

H-1B NEW PROCESS



1st-20th March :

employers register online



1st April :

first day applications accepted



within 90 days of notification :

submit full petition
(4-6mths to receive notification)



1st October :

earliest possible start date

Year 2020 presents a few challenges and developments that are really important for employers to be aware of, as USCIS plans to change the H-1B lottery process.

The new H-1B lottery process allows companies to submit their lottery candidates through a simple electronic form (via USCIS website, \$10 per applicant), between 1st-20th March. The registration window opened at noon on 1st March and will close at noon on 20th March. We advised not to rush to register lottery candidates on the first day to, as it would likely cause an electronic crash. Assuming the H-1B registration process is successful, USCIS will conduct a lottery amongst the electronic applications received during the registration period. Employers should expect to receive a negative/positive response to the candidate by the end of March.

For those cases that are selected by USCIS, you are given 90 days to submit the full petition of your selected candidate. From then, it may take 4 to 6 months to receive the final notification (the earliest possible starting date is 1st October).

We recommend employers prepare the paper form petition along with the electronic one, in case there is an event that causes USCIS to postpone the use of the new registration system. In this case, the paper form application must be submitted by the end of the first working week of April in order to participate in this fiscal year's H-1B lottery.

Companies' challenges through the process

1-Requests for evidence

USCIS is demanding more evidences from the companies.

- Increasing RFE rates
- New Challenges :
 - "specialty occupation"
 - Level 1 wage
 - Degree or Experience relevance

2-Off Site work

"Off site work" refers to H-1B workers working at a third party's worksite.

- Increased demand for evidence (letter from the host company, evidences that the petitioner is the one controlling individuals' work)
- Increased rate of denial



Let's keep in mind

- anticipate and adopt a pre-filing strategy : prepare an extra paper form application in case of an electronic shut down or if the new process is stopped
- estimations are the following : around 50% of applications are fully complete, and 60% of them are approved
- USCIS policy memos require examiners to treat every single case as an initial filing, even for renewal applications, keep in mind to apply as soon as possible to prevent delays (ideally apply 6 months prior the expiration date of your visa, as it could also impact the renewal of the employee's driver license for example)

H-4 EADS : SPOUSES AND WORK PERMITS



H-4 EADs still exist as of today. But the administration has stated its intention to eliminate H-4 EADs in the future. (possibly in the 2nd quarter of 2020).

However it still could be postponed due to US elections, so we advise you to stay up to date via USCIS website or other official sources).

As a consequence, we highly advise to file H-4 EAD or extension as soon as possible as the process takes months and may be delayed for some reasons.

USCIS no longer adjudicates H-4 extensions at the same time as H-1B petition review.

Requests to extend H-4 status or to change to H-4 now require all applicants (including all family members) to attend fingerprints appointment as part of adjudication.

Quick tips to shorten the H-4 extension or EAD processes

Once the employer's H-1B petition is approved, let the spouse go out and come back in the US, then they could be admitted for the same duration as the spouse. By doing this, the H-4 spouse is able to avoid the scheduling of a biometrics appointment and may file his or her work permit application with immigration, because you already extended your H-4.

Another option is to file the H-1B extension and the H-4 together, go through the biometrics process for the H-4 spouse. Once done, simply convert online your process into "Premium Process" with the necessary form and applicable fee.

L-1 UPDATES

L-1 visas are known as Intra Company Transfer Visas. Any large multinational company should obtain USCIS approval of a “Blanket L Petition”. With this petition, L-1 visa applicants are not required to obtain USCIS approval of an individual L-1 petition, provided their foreign employer and the U.S. petitioner are both identified in the USCIS Blanket L Petition.

For Indian citizens, all L-type visas filed under a company's Blanket L Petition shall be submitted at the US Consulate located in Chennai.



Sell yourself !

Despite the rotation of officers, one thing remains constantly clear : the importance given to the candidates interviews. We would say that around 90% of officers' decision to grant or not a visa are based upon the interview they had with the applicant.

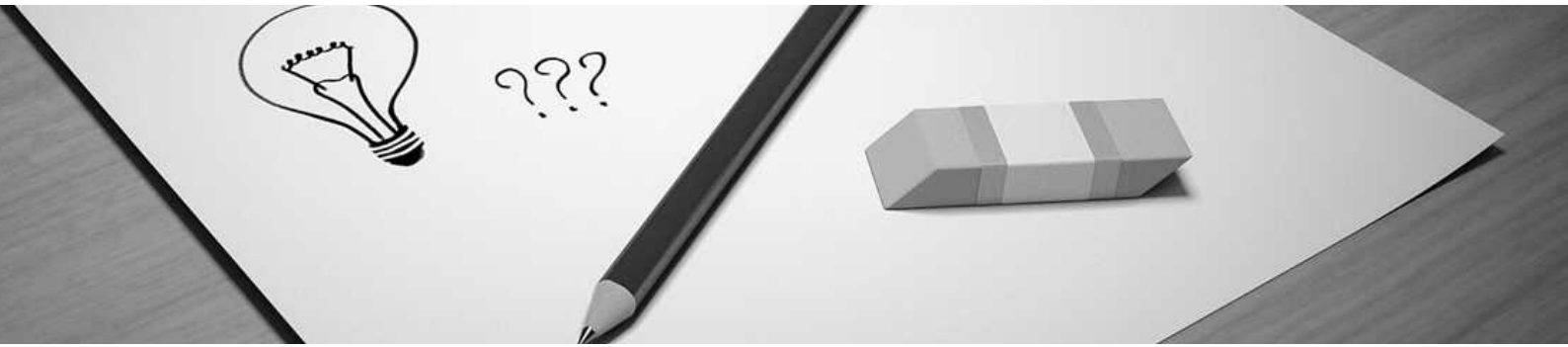
The employee briefing is critical : they shall be able to describe and explain their specialized knowledge and job.

Individual L-1s

In case of a blanket L-1 visa denial at an U.S. consulate, there is an alternate path to apply for an L-1 visa. This alternative requires the U.S. employer to submit an individual L-1 Petition to USCIS for adjudication. This type of processing is mostly used by companies that do not have a Blanket L Petition and for employees who were previously denied and L-1 visa under the petitioner's Blanket L Petition.

This process requires more evidence and information. As a result the process takes much longer and it is more expensive than the L-1 visa application process under a company's Blanket L Petition. Employers should work with experienced immigration professionals to prepare individual L-1 petitions.

ANNEX - FAQ



- **In case of a back up to the old system, will 1st April be the deadline to file an application?**

If there is an announcement stating that the new registration system is not going to be used, then the first possible day to file a H-1B petition would be 1st April. You'll have 7 business days to file and be sure that your application is included in the lottery. This year, the registration window closes on 9th April.

- **What are the H-1 and H-4 alternatives for IT companies ?**

It will really depend of the case : sometimes the employer's and / or employee's nationality will make a difference regarding the visa options, also the employees' credentials are crucial. In addition to H-1B and L visas, you could have for some individuals E-visas (for indians companies, E-1 and E-2 are not available, and E3 classification is to be considered by Australian passport holders), H-1B1 visas for Singaporean and Chilean nationals, O-1 visa for individuals with extraordinary abilities, J-1 is also to be considered for people planning to come to develop their skills temporarily.

It's really a case-to-case deep analysis.

- **Any impact due to the Coronavirus regarding chinese nationals applications ? Is there an expected drop and if yes, will that situation increase the chances for applications of other nationalities ?**

There is currently a travel ban for individuals who have been to China, but as of today, it won't impact the H-1B petition registrations.

However, depending on how the situation evolves with the Coronavirus, there could have new challenges for those coming to the US afterwards. We all have to monitor the situation as it's daily-changing.

Thanks again to our guests and speakers,
Jim ALEXANDER and John NAHAJZER

For any enquiry or suggestion, feel free to contact us
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See you soon in a new webinar !



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