



BEING RESOURCEFUL:

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HR Law Webinar Series

Workforce Planning for the Year Ahead: Business Immigration Review & the Upcoming H-1B Lottery

Fatima Khan, Partner

Martha Mendez-Fischer, Counsel

Mollie E. Hennessee, Counsel

This webinar is CLE accredited in California, Illinois, and Texas for 1 hour of general CLE credit and in Missouri for 1.2 hours of general CLE credit. Additionally, this webinar is CLE accredited in New York for 1 hour of experienced and transitional credit. This webinar is also submitted for 1 hour of SHRM and HRCI credit. We award credit based on attendance for the entire 60 minutes.

New Developments in Business Immigration

- Travel Bans and related adjudication holds and policies
- Visa revocations
- Enhanced vetting
- Increased enforcement efforts
- Termination/elimination of certain humanitarian benefits
- Uptick in requests for evidence and denials
- Longer processing times
- H-1B lottery process changes

Travel Ban (Initial)

June 4, 2025 – Initial travel ban issued by Presidential Proclamation

- Complete suspension on entry for nationals of 12 countries
- Partial suspension on entry for another 7 countries
- Certain exclusions, including permanent residents, dual nationals, immediate family members
- National Interest Exception (case-by-case, very rare)
- Effective June 9, 2025

Travel Ban (Updated)

December 16, 2025 – Updated travel ban issued by Presidential Proclamation

- Complete suspension on entry for nationals of 7 new countries and those traveling with Palestinian Authority-issued documents (in addition to the original 12 countries)
- Partial suspension on entry for 5 of the original countries and 15 new countries
- Similar but narrower exclusions – immediate relative and Afghan Special IVs removed
- National Interest Exception (case-by-case, very rare)
- Effective January 1, 2026

USCIS Hold/Re-Review of Benefit Requests from High-Risk Countries

December 2, 2025 Memo

- Adjudication hold for foreign nationals of the 19 countries from the initial travel ban
- Re-review of approvals for foreign nationals of same countries who entered the U.S. on/after January 20, 2021

January 1, 2026 Memo

- Expanded adjudication hold to foreign nationals of all 39 countries (and the Palestinian Authority) covered in new travel ban
- Expanded re-review of approvals to benefit requests approved on/after January 20, 2021

Applies if foreign national born or a citizen of high-risk country – does not exclude dual nationals

USCIS Hold/Re-Review of Benefit Requests from High-Risk Countries

Nationals of the following countries are subject to the adjudicative hold and comprehensive re-review:

Afghanistan, Angola, Antigua and Barbuda, Benin, Burkina Faso, Burma, Burundi, Chad, Côte d'Ivoire, Cuba, Dominica, Republic of the Congo, Equatorial Guinea, Eritrea, Gabon, the Gambia, Haiti, Iran, Laos, Libya, Malawi, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Syria, Tanzania, Togo, Tonga, Turkmenistan, Venezuela, Yemen, Zambia, Zimbabwe, and individuals with Palestinian Authority-issued or endorsed travel documents

Consular Visa Processing and Other Visa Issues

Visa Revocations

- Early 2025 – Focused on F-1 students
 - Terminations in SEVIS based on criminal histories, but some involved only minor traffic violations and others with no prior conviction nor arrest
 - No prior notice provided to schools or students
 - Most students reinstated following litigation, but many departed the country
- Late 2025 – Expanded to H-1B workers
 - No prior notice or opportunity to contest
 - Appear to be based on computer/AI searches

Consular Visa Processing and Other Visa Issues

- Elimination of third-country visa processing with limited exceptions
 - Foreign nationals must apply for visas at U.S. consulates in their country of citizenship/residence
 - Quick trips to Mexico, Canada, or elsewhere for visa processing no longer permitted for third-country nationals
- In-person interviews for most non-immigrant visa applicants, including children under 14 and adults over 79, with limited exceptions
- Additional vetting to include social media reviews
- Pause on immigrant visa issuance for nationals of 75 identified high-risk countries (separate from travel bans and USCIS hold on adjudication)
- Encourage careful consideration before international travel

Increased Enforcement Efforts

Department of Labor's Project Firewall

- H-1B enforcement initiative announced September 13, 2025
- Secretary-certified investigations (different from typical complaint-driven investigations)
- Collaboration with the Department of Justice's Civil Rights Division, EEOC, DHS, and USCIS
- Focus on protecting U.S. workers
- Potential violations
 - Back wages
 - Reimbursement of fringe benefits
 - Civil money penalties
 - Debarment from H-1B program

Increased Enforcement Efforts

I. USCIS/FDNS Site Visits – Verify compliance with immigration petition filings

- How to prepare
 - Designate knowledgeable representative
 - Review nonimmigrant worker files to ensure accuracy
 - Ensure personnel files, including PAF/I-9 records, are up to date
- During an inspection
 - Verify inspector's credentials and escort them to office/conference room
 - Provide only the information requested
 - Facilitate interviews with nonimmigrant worker/other employees if required
 - Keep detailed records of the visit
- After an inspection – Alert counsel to discuss details/address issues

II. I-9 Audits – Verify employment eligibility verification/documentation

- How to prepare
 - Ensure all I-9 forms are completed accurately and on time
 - Complete regular internal audits/update forms as needed
 - Verify all identity/work authorization documents
- Review process:
 - Employer receives Notice of Inspection (NOI) – *inform counsel immediately*
 - ICE reviews records and issues findings
 - Employers may face potential fines/criminal charges for violations
 - Follow-up audits may be conducted to ensure compliance

III. ICE investigations of F-1 STEM extensions and training plans

Elimination of Certain Humanitarian and Other Benefits

- Termination and suspension of parole programs – Afghan Parole, CHNV Parole, Family Reunification Program
- Termination of Temporary Protected Status and associated EADs
 - Afghanistan, Burma, Cameroon, Ethiopia, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Venezuela
 - Ongoing litigation
- Elimination of automatic extensions for EADs filed on/after October 30, 2025
- Important to stay apprised for I-9 compliance

Review of the H-1B Process

- Eligibility requirements
- Employer obligations
- Annual limitations (85,000 per FY)
- H-1B status defined – professional, specialty occupations
 - “Specialty occupations” are those:
[w]hich require theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation in the United States. 8 CFR 214.2(h)(4)(i)(A)(1)

Overview of H-1B Status

- H-1B status is generally available for six years
 - Available for two, three-year periods
 - Does not reset with a change of employer
- Spouses and minor children are eligible for H-4 dependent status
- Must have a valid H-1B *visa* to re-enter the U.S. after international travel
- Government agencies (DOL, USCIS, DOS, CBP)

Beneficiary's Eligibility Requirements

- At minimum, a U.S. Bachelor's degree
 - Same or similar field of study
 - From an accredited college or university
 - Completed at the time of *filing* the H-1B petition
- Foreign equivalent of a U.S. Bachelor's degree (credential evaluation required)
- Combination of education, training, and work experience equivalent to a Bachelor's degree
- Hold an unrestricted state license or certification if required for the job

Worksites and Wages/Employer Obligations

- H-1B status is employer, position, and worksite specific
- Wages are determined by the Dept. of Labor based on:
 - Position requirements (degree and years of experience)
 - Position duties/responsibilities (entry-level/managerial)
 - Where the work is physically performed (geographic locations)
- Any material changes require analysis of possible H-1B amendment filing with the USCIS prior to the change going into effect, such as:
 - Promotion/role change
 - Changing full-time to part-time status
 - Worksite location change, including hybrid and WFH changes
- Record keeping requirements:
 - PAF – LCA, wage determination documentation, benefits

Historic Lottery

The demand for cap-subject H-1B visas has always been high, often exceeding the annual supply

This chart shows registration and selection numbers for fiscal years 2021-26:

Cap Fiscal Year	Total Registrations	Eligible Registrations*	Eligible Registrations for Beneficiaries with No Other Eligible Registrations	Eligible Registrations for Beneficiaries with Multiple Eligible Registrations	Selected Registrations
2021	274,237	269,424	241,299	28,125	124,415
2022	308,613	301,447	211,304	90,143	131,924
2023	483,927	474,421	309,241	165,180	127,600
2024	780,884	758,994	350,103	408,891	188,400
2025	479,953	470,342	423,028	47,314	135,137
2026	358,737	343,981	336,153	7,828	120,141

Changes: New Weighted Lottery Rule

- Final Rule published December 29, 2025, effective February 27, 2026
- Changes current system of distribution of the 85,000 **cap-subject** H-1B visas available each year as to both the regular and master's cap
- Higher Wage Level registrations receive a higher preference
 - Level I Wage – 1 lottery entry
 - Level II Wage – 2 lottery entries
 - Level III Wage – 3 lottery entries
 - Level IV Wage – 4 lottery entries
- Level is based on the wage offered to the employee, not the wage level chosen for the LCA based on position requirements
- “Lowest Wins” rule
 - If multiple registrations submitted, the lower wage is used for the lottery
 - If foreign national will work in multiple locations, the employer must use the lowest wage for the registration

Registration v. LCA Wage Levels*

- Registration
 - Wage level is identified based on the offered wage alone
 - Simple comparison of the amount of the offered (base) salary to the OEWS wage levels for the applicable MSA
 - Assessed independent of education or experience requirements
- LCA
 - Rules are unchanged
 - Separate and distinct procedure for identifying the wage level
 - Involves comparison of the conditions of employment (e.g., minimum requirements - education, experience, skills etc.) with the baselines set out in the corresponding Job Zone and education code for the applicable SOC code

*The registration wage level and LCA wage level can be different in some cases

Practical Implications of the Weighted Lottery

- More senior roles, paired with a higher wage, may see higher odds of selection
- BUT employer must still ensure prevailing wage compliance
 - Offered wage level must be assigned based on proper DOL classification for the role and the actual education/work experience required
 - Consider pay equity so U.S. workers not adversely affected (Project Firewall)
- **Requires more advanced planning** and close collaboration with immigration counsel prior to lottery registration
 - Registration includes SOC code, worksite, and wage level
 - Can be for a future position (10/01/2026)
 - Information provided in registration should generally match later-filed petition, unless change for business need can be documented
 - **Any changes will be heavily scrutinized**

New Language in the Weighted Lottery Rule

- 8 C.F.R. § 214.2(h)(10)(ii) – Denial of Petition

The petition will be denied if it is determined that the statements on the petition, H-1B registration (if applicable), the application for a temporary labor certification, or the labor condition application, were inaccurate, fraudulent, or misrepresented a material fact, including if the certifications on the registration are determined to be false. An H-1B cap-subject petition will also be denied if it is not based on a valid registration submitted by the petitioner (or its designated representative), or a successor in interest, for the beneficiary named or identified in the petition.

- 8 C.F.R. § 214.2(h)(10)(iii) – Denial of Petition

USCIS may deny a subsequent new or amended petition filed by the petitioner, or a related entity, on behalf of the same beneficiary, if USCIS determines that the filing of the new or amended petition is part of the petitioner's attempt to unfairly increase the chance of selection during the registration or petition selection process, as applicable, such as by changing the proffered wage in a subsequent new or amended petition to an amount that would be equivalent to a lower wage level than that indicated on the registration, or the original cap-subject petition if the registration process was suspended.

Timing & Registration Process

- Electronic registrations began in 2020, new organizational accounts implemented 2024
- Employers & Legal Representatives each create their own organizational account then link via invitation
 - New account setup is currently live
- Each account is tied to a unique email address
- Beneficiary-centric process
- \$215 registration fee per applicant (previously \$10)
- ❖ Registration period: March 4-19

Lottery Results

- At close of registration, USCIS runs a true computer-generated lottery
 - Essentially 2 lotteries for Master's degree applicants
 - Selection results available by March 31, possibility of subsequent selections after June 30
- If selected, USCIS will post notice in online portal
- Employers then have 90 days to submit H-1B petition (April-June)
 - Application fees
 - LCA certified by DOL
 - Forms I-129, I-129H, Data Collection Supplement
 - Supporting documentation of the job offer
 - Evidence the individual meets the job requirements

\$100,000 H-1B Fee

- Issued by Presidential Proclamation on September 19, 2025, *effective* September 21, 2025
- Who is subject to the fee?
 - Petitions filed after the effective date for individuals outside the U.S. without a valid H-1B visa
 - Petitions filed after the effective date seeking consular processing (visa issuance abroad)
 - Petitions filed after the effective date seeking an amendment or COS/EOS within the U.S., if USCS denies the amendment or COS/EOS

\$100,000 H-1B Fee

- Who is **not** subject to the fee?
 - Petitions filed before the effective date
 - Petitions filed after the effective date but seeking a change of status, or amendment/extension of status stateside
 - Beneficiaries of an approved H-1B (change/amend/extend) who later travel abroad for visa processing
 - Individuals who are granted a National Interest Exception (“NIE”) by DHS
 - Granted in “extraordinary rare circumstance” if:
 1. Beneficiary’s presence in the U.S. is in the national interest
 2. No American worker is available to fill the role
 3. Beneficiary does not post a threat to U.S. security or welfare, and
 4. Requiring payment would “significantly undermine U.S. interests”

\$100,000 H-1B Fee

- How is the fee collected?
 - If you know that the petition is subject to the fee (i.e., individual is abroad or seeking consular processing), must include proof of payment or evidence of NIE approval at time of filing
 - If USCIS denies an amendment or COS/EOS, a Request for Evidence will be issued with directions on how to pay the fee
 - Employer can then either choose to pay the fee or withdraw the H-1B petition
- The fee is subject to several ongoing lawsuits

Other Best Practices/Practical Considerations

- Foreign national employees should keep proof of status with them at all times:
 - LPR Card (green card)
 - Valid passport/visa
 - I-797 approval notice
 - I-94 record – always check for accuracy
 - EAD – file renewals early (6 months before expiration)
- DS-160/Social Media:
 - Limit online presence – can be reviewed during visa vetting process
 - Ensure online profiles match petition filings/details submitted with DS-160 visa application
- Remind employees of their obligations to notify USCIS of any change in address through filing an AR-11

Helpful Resources for the H-1B Lottery Registration:

- Registration Instructions – [H-1B Electronic Registration Process | USCIS](#)
- myUSCIS Account – [USCIS | myUSCIS Home Page](#)
- H-1B Regulations: 8 C.F.R. § 214.2(h)(4)
- Department of Labor OFLC Wage Search – [OFLC Wage Search | Flag.dol.gov](#)
- BLS Occupational Outlook Handbook – [Home : Occupational Outlook Handbook: : U.S. Bureau of Labor Statistics](#)
- I-9 Handbook for Employers M-274 – [Handbook for Employers M-274 | USCIS](#)

Team



Fatima Khan
Partner | 314 552 6267 direct



Martha Mendez-Fischer
Counsel | 314 552 6160 direct



Mollie E. Hennessee
Counsel | 314 552 6123 direct

Other Resources on Recent Immigration Changes:

- Travel Bans
 - [Restricting The Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats – The White House](#) (June 4, 2025)
 - [Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States – The White House](#) (December 16, 2025)
- USCIS Policy Memos on Pause/Review of Applications for Individuals from High-Risk Countries
 - [PM-602-0192-PendingApplicationsHighRiskCountries-20251202.pdf](#)
 - [PM-602-0194-PendingApplicationsAdditionalHighRiskCountries-20260101.pdf](#)
- Department of State
 - In-Person Interviews for Nonimmigrants – [Interview Waiver Update September 18, 2025](#)
 - Home Country Visa Processing – [Adjudicating Nonimmigrant Visa \(NIV\) Applicants in Their Country of Residence](#) and [Adjudicating Immigrant Visa \(IV\) Applicants in Their Country of Residence](#)
 - H-1B/H-4 Social Media Vetting – [Announcement of Expanded Screening and Vetting for H-1B and Dependent H-4 Visa Applicants](#)
 - Pause in Immigrant Visa Issuance for High-Risk Countries – [Immigrant Visa Processing Updates for Nationalities at High Risk of U.S. Public Benefits Reliance](#)
- Department of Labor's Project Firewall
 - [US Department of Labor launches Project Firewall to protect America's highly skilled workforce | U.S. Department of Labor](#)

Team



Fatima Khan
Partner | 314 552 6267 direct



Martha Mendez-Fischer
Counsel | 314 552 6160 direct



Mollie E. Hennessee
Counsel | 314 552 6123 direct



QUESTIONS?

