



RELATED PRACTICE AREAS

Immigration and Global Mobility Services
Labor and Employment

RELATED TOPICS

Immigration
H1-B Visa Program

Is The H-1B Lottery Still A Game Worth Playing?

June 28, 2023 | [Labor And Employment](#)



Sarah J. Hawk
Partner
Immigration and
Global Mobility
Chair



Mandira Sethi
Of Counsel

While the H-1B is one of the most popular and well-known nonimmigrant visa categories, the [H-1B visa](#) lottery can be a tricky game to play. To provide context, the H-1B visa category is reserved for individuals who are employed in a role involving a specialty occupation. Recently, it has become increasingly difficult to secure this visa due to systematic shortcomings of the H-1B lottery atmosphere, namely a high volume of submissions, an increase in the likelihood of fraud, and duplicative submissions for the same H-1B beneficiary.

The H-1B visa category has restrictive numerical limitations that cap the number of new visas issued each year at 65,000, with an additional 20,000 available to graduates of U.S. master's degree programs. To determine who may be eligible for the employer-sponsored H-1B visa, the U.S. government administers a lottery each spring, with the number of entries, now referred to as registrations, far surpassing visa availability.

Total submissions of H-1B cases have increased year over year. For example, for fiscal year 2024, 780,884 registrations for H-1B visas were submitted in the computer-generated lottery, reflecting an increase of 61 percent from 483,927 in fiscal year 2023. Fiscal year 2023 also featured a large jump, up 57 percent from submissions in the prior year.

Background on the H-1B Lottery System

Prior to 2020, the U.S. Citizenship and Immigration Services (USCIS) required each petitioning employer to submit a full H-1B petition consisting of the required forms, fees, and supporting documents. Petitioning employers, often through immigration counsel, would flood the courier and postal systems with H-1B filings at the beginning of April, crossing their fingers that their potential H-1B employee(s) would be selected in the lottery. All unlucky petitions would be returned to the petitioner or their immigration attorney with uncashed checks, all forms and documents previously submitted, and for many, a feeling of futility.

For the 2020) H-1B season (fiscal year 2021, the USCIS unveiled a computer-generated lottery and online registration system, making it much easier for employers to register individuals in the H-1B lottery. This system, opening each March, requires employers, through legal counsel or independently, to provide basic details about the company and the individual it hopes to sponsor. At the end of the month, employers and counsel receive electronic notification and, if selected, are then permitted to submit the petition during the filing window determined by USCIS.

The selection provides an opportunity to apply, but is not a guarantee of approval of the petition itself. Those not selected must wait an entire year for the new registration period to open, and the cycle continues.

The significant increase in H-1B lottery entries could largely be attributed to the recent modernization of the process for the H-1B lottery, making it less burdensome to throw one’s hat in the ring.

Propensity for Fraud

As the numbers increase, so do the opportunities for fraud. According to immigration authorities, this may be driving up applications, as companies with different names but the same ownership submit entries on behalf of the same potential H-1B employee. This is reflected in the “Eligible Registrations for Beneficiaries with Multiple Eligible Registrations” column below:

Fiscal Year	Total Registrations	Eligible Registrations	Eligible Registrations With No Other Eligible Registrations	Eligible Registrations for Beneficiaries With Multiple Eligible Registrations	Selections
2024	780,884	758,994	350,103	408,891	110,791
2023	483,927	474,421	309,241	165,180	127,600
2022	308,613	301,447	211,304	90,143	131,924

The USCIS addressed this issue in a recent [announcement](#), reminding H-1B lottery participants that “each prospective petitioner is required to sign an attestation, under penalty of perjury, [confirming] the registrant, or the organization on whose behalf the registration(s) is being submitted, has not worked with, or agreed to work with, another registrant, petitioner, agent, or other individual or entity to submit a registration to unfairly increase chances of selection for the beneficiary or beneficiaries in this submission.” Should the USCIS discover that the attestation made was not true, it may deny a petition or revoke petition approval. Further, the USCIS may refer the petitioning company or potential beneficiary to federal law enforcement agencies for investigation and further action.

Attempts to 'Game the System'

In addition to the unlawful attempts to beat the game, some individuals seem to be gaming the system. Potential H-1B recipients appear to be accepting H-1B sponsorship from multiple employers. For fiscal year 2024, the number of registrations tied to people who applied more than once rose to 408,891. As a reference, this number was merely 165,180 in fiscal year 2023 and 90,143 in fiscal year 2022. However, these applicants, who may convince different, independently owned companies to sponsor them in the lottery, are acting in a way that is perfectly legal.

Both the beneficiary and the employer could be to blame here. While the beneficiary is aware of multiple entries made on their behalf, some companies fail to assess their true labor needs, causing them to overestimate their labor demands when they enter the lottery in March.

Despite these challenges, the H-1B visa lottery remains a game worth playing, as it is a necessary method for the temporary employment of foreign national employees. However, more than ever, the H-1B lottery system is complex and requires a thoughtful and strategic approach, including contingency planning for foreign nationals who ultimately may not be selected in the lottery.

This article was co-authored by Tieranny Cutler, independent contract attorney.