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April 2024 Immigration Updates

H-1B Lottery Results and Next Steps

On April 1, 2024, U.S. Citizenship and Immigration Services (USCIS) announced it received enough electronic registrations for the FY 2025 H-1B numerical allocations (H-1B cap) and completed the initial selection process. This is informally referred to as the H-1B lottery. USCIS already notified all prospective petitioners (employers) with selected beneficiaries that are eligible to file an H-1B cap-subject petition. Employers can file H-1B cap-subject petitions on behalf of beneficiaries selected during the initial selection process beginning April 1, 2024, through June 30, 2024.

All H-1B registrations that were properly submitted but not selected will remain submitted and eligible for any subsequent selections USCIS conducts in the coming months for FY 2025. However, employers may want to start exploring other work authorization options on behalf of individuals who were not selected. Some options may include:

- **Students or Recent Graduates:** If the individual is a college student or recent graduate in F-1 status, he or she may be eligible to participate in 12 months of Optional Practical Training (OPT) post-graduation. Additionally, if the individual graduated with a qualifying STEM degree (and the employer is registered with E-Verify), he or she may be eligible for an additional 24 months of STEM OPT. Also, current F-1 students may be able to work with their Designated School Official (DSO) to obtain work authorization through Curricular Practical Training (CPT) while still in school.
- **Canadian or Mexican Citizens:** The individual may qualify for a TN visa if he or she is (1) a Canadian or Mexican citizen; (2) offered a position that meets one of the TN occupations (e.g., engineer, economist, management consultant, pharmacist) set forth in the United States-Mexico-Canada Agreement (USMCA), formerly NAFTA; and (3) meets the TN occupations degree, experience, or license requirement.

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- **Australian Citizens:** Australian citizens may be eligible for the E-3 visa, which has similar requirements as the H-1B visa.
- **Singaporean and Chilean Citizens:** Singaporean and Chilean citizens may be eligible for the H-1B1 visa, which also has similar requirements as the H-1B visa.
- **Other Non-Immigrant Visas:** The individual may be eligible for another non-immigrant visa that provides work authorization, such as the L-1 intracompany transferee visa, O-1 extraordinary ability visa, E-1 treaty trader visa, and E-2 treaty investor visa.
- **Dependents:** If the individual is married to a foreign national, he or she may be eligible for an employment authorization document (EAD) or eligible for work authorization incident to his or her dependent status.
- **Green Card Sponsorship:** The employer could pursue, or continue with, green card sponsorship on behalf of the individual, but, in most cases, this will not provide immediate work authorization.
- **Remote Work:** The individual may be able to start or continue employment abroad, but employers should consult with an international tax attorney and a local attorney in the area to confirm and consider any potential tax consequences and local law implications prior to proceeding with the engagement.

USCIS Fee Increases

On April 1, 2024, a final rule adjusting USCIS fees went into effect, resulting in increased fees for a multitude of immigration applications and benefits. Notable fee increases are summarized below:

Immigration Application/Benefit	Former Fee	New Fee
Form I-129 (H-1B)	$460	$780
Form I-129 (L-1)	$460	$1,385
Form I-129 (O, TN, P)	$460	$1,055

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Form I-485	$1,225	$1,440

USCIS also instituted a new Asylum Program fee to support the U.S. asylum process. Employers must now pay a $600 Asylum Program fee when filing Form I-129 and Form I-140. In total, these changes could add more than $1,000 in costs to many business immigration filings. Non-profits and small employers (i.e., employers with 25 or fewer full-time equivalent employees) may be eligible for lower filing fees and exemptions from certain fees.

As part of the rule, there is also a $50 discount for online filers when an online filing option is available. USCIS now has a calculator on its website to help filers submit the correct fee payment.

USCIS Premium Processing Changes

As previously reported, on February 26, 2024, USCIS increased the filing fee for premium processing from $2,500 to $2,805. Additionally, effective April 1, 2024, USCIS changed the way it calculates the 15-day premium processing timeframe. Rather than process applicable cases in 15 *calendar* days (or 30-45 calendar days for some filings), USCIS will now process most premium processing requests in 15 *business* days (or 30-45 business days for some filings). Despite this change, the USCIS premium processing website continues to reference "calendar days" in several sections.

Streamlined Process for EADs for Refugees

USCIS recently streamlined the Employment Authorization Document (EAD) process for refugees. Refugees are legally authorized to work once admitted to the U.S., but to obtain proof of this, they were previously required to apply for an EAD by filing a Form I-765, which took several months to process. Now, the process has been shortened to approximately 30 days. First, USCIS

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will digitally create a Form I-765 for the refugee as soon as they are admitted to the U.S. Once the Form I-765 is approved, the refugee should receive the EAD within one to two weeks.

For more information, please contact the authors or any member of Frost Brown Todd's Immigration Team.

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