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H-1B Season Begins With Positive Developments for Employers and Candidates

The fiscal year 2025 H-1B lottery registration process opens on March 6, 2024, and will remain open through March 22, 2024. The lottery allocates approximately 85,000 H-1B visas to specialty occupation foreign workers. The U.S. Department of Homeland Security recently took steps to modernize the H-1B visa lottery program for high-skilled foreign workers by changing the method regarding how H-1B lottery submissions are selected. The move is intended to limit the number of fraudulent lottery registrations that make the final cut.

The primary rule change is that individual beneficiaries will be selected rather than the employers who registered them. USCIS previously selected lottery winners by employer registration, which afforded those with multiple registrations a higher chance of being selected. This was because the lottery registration was made using the company's EIN without collecting specific identifying information for the candidate. Although multiple companies can continue to petition for the same individual, the individual will only be entered into the lottery once no matter how many companies submit registrations on their behalf.

USCIS believes that the process change will curtail fraud, streamline the application process and implement integrity measures. As a practical matter, the change should improve the odds that an individual candidate will be selected. According to USCIS, "[t]he improvements in these areas should make H-1B selections more equitable for petitioners and beneficiaries and will allow for the H-1B process to be fully electronic from registration, if applicable, until final decision and transmission of approved petitions to the Department of State."

The fee to register a potential employee or a current employee in another nonimmigrant status (F-OPT, TN, L, etc.) who would benefit from a change in status remains just \$10.00. Employers should liberally assess and register as many qualifying persons who might be candidates for employment in the next 12 – 18 months. As noted above, the registration period runs from March 6th – March 22nd, although it should be noted that it closes at noon Eastern on the 22nd.

The recent USCIS news was not all favorable to employers as significant fee increases will become effective April 1, 2024, i.e., just in time for all candidates selected in this year's lottery. At that time, the fee to file the I-129 Petition for H-1B Nonimmigrant Worker will increase from \$460 to \$780, although there is a new provision for small employers and nonprofits that provides a static filing fee of \$460. The fee for optional premium processing will increase from \$2500 to \$2805. With the exception of the optional premium processing fee, all H-1B filing fees (including the ACWIA and fraud detection fees that remain unchanged) must be borne by the sponsoring employer.

Please reach out to Mike Thompson (mthompson@lehrmiddlebrooks.com) for assistance with your H-1B or other employer-based immigration needs.