

## **USCIS Guts H-1B Lottery System, Prioritizing High Wage Earners Instead**

Sunita Sohrabji

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U.S. Citizenship and Immigration Services announced Jan. 7 that it was modifying the H-1B selection process, essentially gutting the current randomized lottery system in favor of a new method that would prioritize applicants who are offered higher wages.

Under the provisions of the new rule, applicants who are offered Level 4 wages — the highest wage level as determined by Occupational Employment Statistics — would be selected first. When applicants for that level are exhausted, applicants who are offered Level 3 wages would next be considered, and on down to Level 1 wage earners.

More than 70 percent of H-1B visa holders are highly-skilled workers from India. Currently, 65,000 H-1B visas are allocated each year via the lottery system, while an additional 25,000 are reserved for foreign students graduating from a U.S. university with a Masters' degree or higher.

The final rule will take effect March 8, just before the start of the traditional “H-1B Season” April 1, essentially knocking out the 2022 lottery system.

But immigration attorney Cyrus Mehta noted in a blog piece that President-elect Joe Biden may eliminate or delay the implementation of this rule, which was announced 11 days before President Donald Trump is scheduled to leave office. The rule could be challenged in court based on the argument that Congress mandated that H-1B visas be made available in the order in which petitions are filed, not based on wages offered, said Mehta.

Biden announced Jan. 8 that he would immediately introduce immigration legislation shortly after taking office Jan. 20. In his briefing with reporters, the incoming president spoke extensively about the Deferred Action for Childhood Arrivals program, and the broken asylum system, but did not mention business immigration.

Biden did offer some reassurances about sustaining the H-1B program while on the campaign trail. But the Web site Marketplace quoted David Bier of the Cato Institute who said that because immigration policy is so politically divisive, he isn't confident the Biden administration will be able to follow through.

“This is the one area of immigration policy where the Biden team has put out sort of a lukewarm statement about his views on work visas, particularly high-skilled work visas,” Bier said.

Vice President-elect Kamala Harris announced Dec. 8 that she would overhaul the U.S. immigration system within 100 days after taking office, in a speech at the virtual National Immigration Integration Conference. She vowed that the new administration would send a comprehensive immigration reform bill to Congress within the first 100 days, reinstate the Deferred Action for Childhood Arrivals program, and repeal the Muslim ban. But Harris, like Biden, did not mention business immigration in her speech.

The new rule was issued after a 30-day public comment period. The Department of Homeland Security, which proposed the rule, said it received 1103 comments. DHS said the rule would “maximize H-1B cap allocations, so that they more likely will go to the best and brightest workers; and it will disincentivize abuse of the H-1B program to fill relatively lower-paid, lower-skilled positions, which is a significant problem under the present selection system.”

USCIS said the new rule would “prioritize wages to protect the economic interests of U.S. workers and better ensure the most highly skilled foreign workers benefit from the temporary employment program.”

“Modifying the H-1B cap selection process will incentivize employers to offer higher salaries, and/or petition for higher-skilled positions, and establish a more certain path for businesses to achieve personnel needs and remain globally competitive,” said the agency in a press statement.

“The H-1B temporary visa program has been exploited and abused by employers primarily seeking to fill entry-level positions and reduce overall business costs,” said USCIS Deputy Director for Policy Joseph Edlow in a press statement.

“The current H-1B random selection process makes it difficult for businesses to plan their hiring, fails to leverage the program to compete for the best and brightest international workforce, and has predominately resulted in the annual influx of foreign labor placed in low-wage positions at the expense of U.S. workers,” he said.

In related news, the US-India Strategic Partnership Forum has asked Biden to lift Trump’s suspension on new H-1B workers entering the U.S. The outgoing president implemented the rule in July, saying it was necessary to protect American workers and their jobs during unprecedented unemployment levels amid the COVID-19 pandemic. Critics of the ban pointed out that the ban was based on a false narrative, noting that unemployment levels in the tech sector have been low even amid the pandemic.

We have basically recommended to the Biden administration to ease up the H-1B visa ban, Mukesh Aghi, president of the USISPF, told PTI.

Aghi said he had spoken with members of Biden’s transition team to advocate for green cards for every international student earning a Master’s or Ph.D. in a science, technology, engineering or mathematics discipline, “so that they stay and contribute from day one as a taxpayer and also to the growth of the economy.”

Aghi also said that the current cap of 85,000 new H-1B visas issued each year is inadequate to meet the needs of the tech industry.