

Labor & Employment Alert
March 9, 2023

THE VITAL IMPORTANCE OF IMMIGRATION TO THE UNITED STATES
AND THE H-1B PROCESS FOR EMPLOYERS TO HIRE WORKERS FROM ABROAD

Migrants and workers from abroad have been a vital part of the success and growth of the United States since its inception. Indeed, many of our ancestors came from abroad and contributed to shaping our nation's history. We recognize the many benefits that migration has brought to our country, the talent, knowledge and expertise that workers abroad have brought to our economy, and that the United States would not be the world leader it is today without its diverse workforce.

MHTL supports and assists employers with understanding the various legal processes involved to sponsor and hire employees from abroad, as well as to understand how to deal with changes made between presidential administrations. In doing so, MHTL helps employers attract talent from within U.S. borders and abroad contributing to the continuation and success of our country's diverse workforce.

Migration to the United States continues and will continue to play a vital role in this country's success. MHTL takes pride in contributing to such national success by supporting employers in the legal hiring of workers from abroad, which involve navigating immigration channels available through the United States Citizenship and Immigration Services (USCIS).

One process in particular, the H-1B visa, allows employers to sponsor a worker from abroad. This process allows American employers to employ non-American workers for a three-year period or for up to six years with an extension. The H-1B visa process is lengthy. To qualify, the worker must hold a specialty occupation, which requires at least a bachelor's degree or its equivalent in work experience and specialized knowledge. Some common job fields with specialty occupations include, but are not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business, accounting, law, theology, and the arts. Employers can refer to the U.S. Bureau of Labor Statistics' Occupational Outlook Handbook or other sources.

For new hires, the process begins with the enrollment in the H1-B visa lottery where the registrant creates a MyUSCIS account, pays an electronic non-refundable registration fee of \$10, and enters information pertaining to the worker and employer. Only 65,000 H-1B visas are granted through the Regular Cap per fiscal year (which begins on October 1st). An additional 20,000 visas are granted to individuals with a master's degree (or above) from a university in the United States. This year, the lottery opened on March 1st at 12:00 PM Eastern and will close on March 18th at 12:00 PM Eastern. The USCIS intends to notify selected registrants that they were chosen from the lottery on March 31st. To highlight how competitive the H-1B process is, during



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fiscal year 20223, USCIS received 483,927 H-1B applications for only 85,000 available H-1B visas.

To successfully sponsor a worker from abroad, an employer would also need to submit a Labor Certification Application (LCA) to the U.S. Department of Labor (DOL) attesting to compliance with H1-B requirements. Filing of the LCA is done through the DOL’s online filing system known as the FLAG system. The LCA must be submitted within six months prior to the start date of employment. LCAs submitted more than six months prior to such start date will not be acceptable.

The process does not end there. Registrants selected from the USCIS H1-B lottery must also file Form I-129, the Petition for a Nonimmigrant Worker. Employers may begin filing their petitions for an H-1B visa as early as April 1, 2023. The petition itself is a lengthy application, requesting detailed information about the worker (beneficiary), the employer, and the job title and compensation the worker would have when joining the employer.

If the petition for an H-1B visa is denied, an employer would have a couple of options to contest the unfavorable decision, such as appealing the denial to the USCIS Administrative Appeals Office (AAO), submitting a motion to reopen based on new facts, or submitting a motion to reconsider based on an incorrect application of law or policy.

Given the complexity of the process, it is important for employers to understand the process in its entirety, how to submit the necessary paperwork timely, and key considerations post-hiring. MHTL stands ready to assist employers who need legal assistance with such matters.

This Client Alert was prepared by Mariem Marquetti and Brett Cavanaugh. This Alert was reviewed with Arthur Murphy, Katherine Hesse and Michael Maccaro. If you have any questions about this issue, please contact Arthur Murphy or the attorney responsible for your account, or call (617) 479-5000.

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