



2019 H-1B Visa Program News and Trends

In the United States, April signifies a number of different things to different people. The start of spring, the beginning of baseball season, and of course, the income tax filing deadline.

For immigration attorneys, April is a noteworthy month because April 1 is the day the U.S. Citizenship and Immigration Service (USCIS) begins accepting H-1B petitions for the upcoming fiscal year.

With the H-1B season newly upon us, here are three recent developments regarding H-1B visas immigration attorneys should have on their radars.

NEW FOR 2019

There are a [few notable changes this year](#) with how USCIS is processing H-1B petitions.

First, premium processing will be available this year. Importantly, USCIS will be conducting premium processing in two phases. The first phase will focus on H-1B petitions requesting a change in status. Premium processing for all other H-1B petitions will not begin until June 2019 at the earliest.

Second, USCIS launched a new online [H-1B Employer Data Hub](#) on April 1. The data hub allows members of the public to search for H-1B petitioners by fiscal year, NAICS industry code, company name, city, state or ZIP code. The data hub gives the public the ability to calculate approval and denial rates and to review which employers are using the H-1B program. USCIS says the data hub is part of its “continued effort to increase the transparency of the H-1B program.”

Finally, USCIS is reversing the order by which it selects H-1B petitions under the H-1B regular cap and the advanced degree exemption. This change increases the chances that more H-1B visas will be allocated to those foreigners with an advanced degree from a U.S. college or university.

THE DARK SIDE OF H-1B VISAS

A recent [article](#) discussed what the article claims is the common occurrence in the IT consulting industry of H-1B workers being forced by their employers to work well past 40 hours per week without being paid overtime. According to the article, 80-hour workweeks are common, but H-1B workers are fearful that if they complain, they will be fired and will have trouble finding new jobs. Without a job, an H-1B worker could be deported back to his or her home country.

The two IT consulting firms named in the article as subjects of workers' complaints, Tata Consultancy Services and HCL, are the second and 11th largest H-1B employers respectively, [according to data from USCIS](#).

A POTENTIAL BLOW TO THE FAMILIES OF H-1B WORKERS

It is unlikely that there will be significant changes to the H-1B visa program in the foreseeable future given the contributions the program has made to the United States economy in the 30 years since it was enacted by Congress. The H-1B program has played a prominent role in [solidifying the United States, and more specifically Silicon Valley](#), as the technology capital of the world.

However, the Trump administration's views toward immigration may still impact the program and H-1B workers.



Recently, the Trump administration [called for the repeal of the H-4 Employment Authorizing Document \(EAD\) program](#). EADs grant H-4 visa holders permission to work in the United States while living here. H-4 visa holders are the spouses and children of H-1B visa holders.

If the Trump administration makes it more difficult for the family members of H-1B workers to themselves work while in the United States, the H-1B visa program could be negatively affected. Some foreign workers may not be willing to travel to the United States and begin a career here without their family in tow. This could, theoretically at least, reduce the number of H-1B workers in the United States.

Should the number of H-1B workers in the United States ever decrease to the point where too many jobs requiring skilled workers were going unfilled, economic and political repercussions would almost certainly follow.

ARE H-1B VISAS SOON TO BE IN THE EYE OF THE POLITICAL STORM?

Immigration reform has, of course, been a prominent focus of the Trump administration. For the most part, the H-1B visa program has taken a backseat to an unwavering focus on the U.S.-Mexico border. However, news coverage of alleged abuses of H-1B workers coupled with calls for changes to the EAD program have brought us to a point where the H-1B program might soon be unable to avoid the political spotlight.

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