Preface

The 2026 Edition of the *H-1B Handbook* provides a comprehensive, up-to-date analysis of the standards and procedures that apply to companies seeking to employ foreign nationals in the H-1B program. There have been a number of significant developments in the past year that will have a far-reaching impact on H-1B practice.

Proclamation No. 10973

On September 19, 2025, President Trump issued Proclamation No. 10973, 90 Fed. Reg. 46027 (Sept. 24, 2025), which bans an H-1B specialty occupation employee from entering the United States unless the employer has paid a $100,000 fee for the sponsored employee. The presidential proclamation on H-1Bs is a restriction on entry to the United States that stems from the President's statutory authority to suspend or curb the entry of an individual or class of foreign nationals if it is found to be detrimental to U.S. interests.

The $100,000 fee applies where (1) the beneficiary is outside the United States and does not hold a valid visa, (2) an H-1B petition is filed on Form I-129 for consular notification whether the beneficiary is in the United States or abroad, or (3) where U.S. Citizenship and Immigration Services (USCIS) denies a request for an H-1B extension, amendment, or change of status and approves the underlying H-1B petition only for consular notification.

In December 2025, a D.C. federal district court judge issued an opinion upholding the legality of the $100,000 fee finding that the proclamation fell within the President's authority under INA § 212(f) [8 U.S.C.A. § 1182(f)]. The December 2025 ruling has been appealed, and several other legal challenges to the fee remain pending in other courts.

Note these additional points on applicability:

- If a change of status, extension of stay, or amended stay is requested and approved by USCIS, the fee will not apply to that H-1B petition. Similarly, if a change-of-employer petition requests an extension of stay and is approved for an extension of stay, the petition is not subject to the fee.
- If the change of status, extension of stay, or amended stay request is denied (e.g., because the foreign national was found to have violated status), USCIS will not approve the underlying H-1B petition without payment of the $100,000 fee or an approved national interest exception.
- If the foreign national is the beneficiary of an H-1B petition and request to change status, traveling internationally while the petition is pending will cause the change of status request to be deemed abandoned and will trigger the fee.
- National interest exceptions for specific employees will be granted in "extraordinarily rare" circumstances where the employer can meet certain stringent criteria.
- When applicable, the $100,000 fee must be paid before a subject petition is filed. The payment must be made through the Treasury Department's Pay.gov portal.
- In the event that USCIS determines that a filing is not eligible for an extension, amendment, or change of status but the underlying H-1B petition is approvable for consular notification, it is likely USCIS may issue an request for evidence (RFE) or notice of intent to deny (NOID) the petition, stating that the underlying petition cannot be approved unless the petitioner submits proof of payment of the $100,000 fee or proof that a national interest exception has been approved.

Employers and their counsel will need to evaluate each prospective H-1B employee to determine whether a petition filed on their behalf is subject to the new $100,000 H-1B fee.

Even if the candidate is in the United States, employers are cautioned that, if USCIS determines that a request for a change of status is not approvable, the employer would be required to pay the $100,000 fee or obtain a national interest exception in order to obtain an approval of the underlying petition. As a result, employers must also assess whether there are factors in the prospective employee's immigration or criminal history that may render a change of status or extension request deniable.

December 2025 Rule Implementing Wage-Based Weighted Lottery

Under a new regulation issued in December 2025, the Department of Homeland Security (DHS) is replacing the longstanding random H-1B cap lottery process with a new weighted lottery that increases the odds of selection for beneficiaries being offered the highest wages according to the Department of Labor's (DOL's) four-level prevailing wage system. See 90 Fed. Reg. 60864 (Dec. 29, 2025). DHS implemented the system on February 27, 2026, and it is in effect for the fiscal year (FY) 2027 H-1B cap season, which began in March 2026. This means that, for each prospective beneficiary registered in the H-1B cap registration system, employers are required to provide the DOL prevailing wage level corresponding to the salary that they will offer that employee.

The new H-1B quota allocation system is based on the DOL's Occupational Employment and Wage Statistics (OEWS) wage levels. When an employer registered a beneficiary for the FY 2027 cap, the employer was required to state the OEWS wage level to which the offered salary corresponds for that occupation and geographic area of employment. A beneficiary whose offered wage corresponds to Level IV (the highest tier) of the four-level OEWS wage structure is entered into the selection pool four times. A Level III beneficiary is entered three times; a Level II beneficiary two times; and a Level I beneficiary once.

To implement the rule, USCIS has made changes to the online H-1B cap registration tool for use in the FY 2027 H-1B cap registration season. Specifically, as of the date of submission of the registration, employers must now indicate the highest OEWS wage level that the beneficiary's proffered wage equals or exceeds for the relevant Standard Occupational Classification (SOC) code in the area of intended employment. If the beneficiary will be working in multiple locations, the employer must first determine the OEWS wage level for the occupation in each of the multiple locations and then select the lowest corresponding OEWS wage level associated with the position. If more than one employer submits a bona fide registration on behalf of a foreign national, the foreign national would be entered into the H-1B cap lottery according to the registration with the lowest prevailing wage level.

The new regulation favors higher salaries for H-1B cap beneficiaries. An employer can choose to offer a wage to be more competitive in the H-1B selection process. For example, an employer could offer a Level IV wage even if the beneficiary will work in a position with a lower OEWS wage level on the labor condition application (LCA). DHS acknowledged that some employers may choose to offer a higher wage to be more competitive in the H-1B selection process even if the offered wage does not necessarily reflect the skill level required for the position. Such decisions should be discussed with immigration counsel.

The new weighted system could affect the odds of selection in the cap lottery and limit an employer's ability to hire candidates who are in the early stages of their careers. Under the prior unweighted random cap lottery, USCIS selected 28.9% of H-1B cap registration beneficiaries for FY 2025 and 35.35% for FY 2026. Under the new system, the odds of selection could increase for some categories of foreign nationals, but a number of variables make the selection rate difficult to predict. Some employers may decide not to participate in this year's H-1B cap or may significantly reduce the number of candidates they register for the lottery because of cost concerns. The new system strongly favors higher wages, which some employers may be unable to support. The new $100,000 H-1B fee may also deter some employers from sponsoring candidates. A lower participation rate could increase the overall odds of selection for employers who elect to sponsor H-1Bs for the FY 2027 cap. On the other hand, there is a strong possibility that many employers will seek to raise wages to Level III or IV. If that occurs, it could limit employers' access to some candidates, particularly those offered a wage corresponding to Level I, the entry-level tier of the DOL wage system. Though candidates being offered a Level I wage could still be selected in the weighted lottery, their odds could be significantly lower.

Online Presence Review Policy for H-1B Visa Applications and USCIS Heightened Review of Extension of Status and Change of Status Cases

The second Trump Administration has several executive orders impacting nonimmigrant visa (NIV) applicants. Exec. Order No. 14161, 90 Fed. Reg. 8451, issued in January 2025 requires enhanced security screening and vetting of all foreign nationals applying for U.S. visas, entry into the United States, or U.S. immigration benefits. Another executive order issued in January 2025, Exec. Order No. 14188, 90 Fed. Reg. 8847, is designed to combat antisemitism in college campuses. In response to these directives, the Department of State (DOS) has directed all H-1and H-4 visa applicants to undergo a review of their online presence as part of their visa applications at U.S. consulates abroad. The new policy went into effect on December 15, 2025. A visa applicant's online presence includes the applicant's social media accounts and activity as well as information in online databases and websites. Under the online presence review process, H-1B and H-4 visa applicants will be required to set their social media privacy settings to "public" in order to facilitate State Department review.

The vetting guidelines direct consular officers to look for (1) indications of "hostility toward the citizens, culture, government, institutions, or founding principles of the United States," (2) indications that an applicant advocated for, aided, or supported designated foreign terrorists and other threats to U.S. national security or "perpetrate[d] unlawful antisemitic harassment or violence," (3) indications that an applicant might "steal technical information, exploit U.S. research and development, and spread false information for political or other reasons," and (4) whether an applicant "demonstrate[s] a history of political activism" and whether there is a "likelihood [the applicant] would continue such activity in the United States." Another focus of the H-1B and H-4 online presence review will be "censorship" of free speech and whether the applicant is "responsible for or complicit in" the "censorship or attempted censorship" of Americans. The online presence review will apply equally to new and returning H-1B and H-4 visa applicants.

If perceived derogatory information is found, the consular officer can refuse the application or call the applicant back for a follow-up interview. The discovery of derogatory content could trigger additional review "to determine whether the foreign national will respect U.S. laws and engage only in activities consistent with their nonimmigrant status."

Foreign nationals with H-1B and H-4 visa appointments should be prepared for the possibility the consular post may cancel their appointment and reschedule it, possibly to a date several months in the future. In addition to the rescheduling of existing appointments, wait times for new visa appointments—for H-1B, H-4, and other nonimmigrant visa types—are likely to increase due to decreased consular capacity. Specifically, visa appointment slots are likely to become more limited on account of the additional work that consular officers must perform under the online presence review process. The new vetting standards also mean that applicants may face an increased likelihood of being flagged for lengthy background checks and longer waits for visa issuance. These factors could mean that H-1B and H-4 visa applicants are delayed in their ability to enter the United States.

USCIS, for its part, has directed officers to consider foreign nationals' support for "anti-American" ideologies or organizations and an array of other new factors when adjudicating certain applications and petitions for immigration benefits according to updated guidance revising the agency's Policy Manual released in August 2025. See 2 USCIS-PM A.4, 2 USCIS-PM F.8, 10 USCIS-PM A.4. The expanded list of factors to be considered in exercising discretion when adjudicating certain immigration applications now includes whether the foreign national "has endorsed, promoted, supported, or otherwise espoused anti-American views or the views of a terrorist organization or group," including organizations that "support or promote anti-American ideologies or activities, antisemitic terrorism, antisemitic terrorist organizations, [or] antisemitic ideologies." The revised guidance adds that this would include foreign nationals who have "engaged in physical harassment of any person in furtherance of the organization or group." Engaging in such activities will be treated as an "overwhelmingly negative factor" in an adjudicator's weighing of positive and negative factors when making discretionary adjudications. USCIS will consider social media postings by or involving the foreign national in identifying individuals who may fall within this group.

USCIS adjudicators will consider these new additional factors in a range of immigration case types, including I-129 and I-539 extensions or changes of status applications filed on behalf of H-1B workers and H-4 dependents, and most employment authorization documents (EAD) applications filed on Form I-765, including I-765 applications for H-4 EADs, F-1 optional practical training (OPT) EADs and science, technology, engineering, and mathematics (STEM) OPT EADs. These case types allow for consideration of the new additional factors because adjudication of these cases involves the exercise of discretion.

The full impact of the new Policy Manual guidance will not be known until USCIS begins to issue decisions in cases subject to heightened review. Employers and foreign beneficiaries should be prepared for the possibility of detailed requests for evidence pertaining to social media use and other activities, longer wait times for case decisions, and higher rates of denial.

DOL's Firewall Initiative (LCA Investigations)

In September 2025, the DOL announced the launch of Project Firewall, which it describes as the agency's renewed enforcement initiative for the H-1B visa program. Under Project Firewall, the DOL is conducting more frequent LCA audits and investigations, among other enforcement activities.

The DOL has long possessed and used existing legal authority to investigate and enforce employer compliance with H-1B wage and hour rules. As part of the Project Firewall initiative, the DOL indicated that it will increase the use of investigations certified by the Secretary of Labor, who authorizes enforcement in a broader range of circumstances, including where no outside complaint has been made. The DOL will share investigation and enforcement findings and coordinate with other government agencies in connection with its H-1B investigations. A DOL finding that an employer has failed to comply with H-1B wage and hour rules can lead to significant penalties, including the repayment of back wages, payment of fines, and/or debarment from the H-1B program. Collaborations between the DOL and other federal agencies could lead to further enforcement activity and penalties.

The Project Firewall initiative signals that DOL investigations of employer H-1B compliance are likely to become more proactive, rigorous, and documentation-focused. For example, the DOL may shift away from its practice of viewing minor irregularities in an employee's LCA Public Access File as technical violations and instead treat them as substantive failures. The frequency and level of penalties are also likely to escalate up to and including the most severe penalty of debarment from the H-1B program for serious or willful violations. Finally, Project Firewall increases the risk of cross-agency enforcement, with potential involvement of USCIS, the Equal Employment Opportunity Commission, and/or the Department of Justice, if the DOL believes that there is reason to trigger broader investigations into a company's potential violation of immigration, employment, or criminal law.

Employers should take a proactive stance on immigration compliance and consider internal audits of their practices to minimize the risks of violations and penalties.

Other Developments

Note these additional developments impacting H-1B practice:

- USCIS has issued a revised Form I-129, Petition for Nonimmigrant Worker, dated February 27, 2026. As of April 1, 2026, USCIS is only accepting the 02/27/26 edition. The changes to the I-129 form and supplements are related to the new wage-based weighted system being utilized for the H-1B cap lottery. The revisions to the form are found in the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement.
- Under Proclamation No. 10998, 90 Fed. Reg. 59717, nationals from 19 countries as well as persons with travel documents issued by the Palestinian Authority are barred from both immigrant and nonimmigrant visa issuance (including H-1B issuance) unless an exception applies. Under a January 2026 memorandum, USCIS is also imposing an adjudication hold and re-review policies to all pending and some approved immigration benefit requests for foreign nationals from any country subject to the travel ban.
- In March 2026, the DOL released a proposed regulation which would restructure the prevailing wage system for the H-1B and PERM programs to increase prevailing wages. Level I (entry-level) wages for H-1B and PERM cases, for example, would increase from the 17th percentile of wages for the occupation and geographic location to the 34th percentile—which is the current wage minimum for Level II. The proposed system would not take effect until the regulation clears the federal rulemaking process, which typically takes several months. Court challenges are possible.
- An August 2025 proposed rule seeks to eliminate DHS' current regulation directing USCIS officers to give deference to previous I-129 temporary worker petition approvals involving the same parties and the same underlying facts when adjudicating extensions of stay and other types of I-129 filings. The proposed elimination of the current deference rule would increase uncertainty in adjudications and could result in a significant increase in the rates of requests for evidence and denials for extension applications as occurred during the first Trump Administration.
- In February 2025, USCIS issued guidance that expands the circumstances under which the agency will initiate removal proceedings against a foreign national by issuing a notice to appear (NTA). Under the new policy, individuals applying for USCIS immigration benefits, such as those filing an I-539, may be at greater risk of NTA issuance if their application is denied. USCIS will not issue NTAs to beneficiaries of I-129s under the above circumstances. In such a case, it appears that the new policy would result in USCIS initiating removal proceedings against the spouse and child applicants, but not against the principal beneficiary.
- Stakeholders are reporting on a new RFE trend in employment-based cases, such as I-129s, requesting the beneficiary's current address for biometrics collection. Stakeholders report receiving this type of RFE in extension and change-in-employer cases. The RFEs are apparently triggered by criminal database checks, including for minor infractions.
- In March 2025, DHS issued a rule mandating a new online registration process for certain noncitizens to comply with the existing registration requirements of the INA. Foreign nationals who entered the United States with a visa (such as H-1B and H-4 nonimmigrants) are already considered registered and therefore are not subject to the new registration requirement. However, children who entered the country before the age of 14 are required to undergo registration within 30 days of turning age 14 (unless they were subsequently issued either a U.S. visa or I-94 after turning age 14).
- U.S. consulates have implemented a significantly narrower version of the interview waiver program that will require nearly all NIV applicants to appear for an in-person interview except for most diplomatic visa applicants and certain B-1/B-2 and H-2A visa applicants.

- The DOS is directing NIV applicants to schedule their visa appointment at a post in their country of nationality or residence. Third-country national (TCN) applicants may wait substantially longer for a visa appointment and may find it more difficult to qualify for a visa. The DOS policy announcement states that "rare" exceptions may be made for humanitarian, medical emergency, or foreign policy reasons. The agency has issued a list of designated NIV consular post locations for foreign nationals whose country of nationality or residence does not have an NIV-issuing consular post.
- DHS has proposed a significant expansion of biometrics collection. The proposal would require foreign nationals who have been granted an immigration benefit to provide periodic biometrics and be subject to screening and vetting throughout their stay in the United States. The proposal would also expand biometrics collection to any individual filing or associated with an immigration filing (unless an exemption applies). Those subject to the expanded biometrics requirement would include petitioners.
- For all paper-based filings, USCIS now accepts only credit card and Automated Clearing House (ACH) debit payments. To pay by credit card, stakeholders must complete and sign Form G-1450. To pay by electronic debit from a U.S. bank account (ACH debit), they must use Form G-1650. USCIS no longer accepts paper checks or money orders.
- DHS has eliminated the 540-day automatic EAD extensions for EAD renewal applicants. The list of affected EAD categories includes H-4 spouses. Those affected by the new policy will no longer receive any automatic extension of their EAD upon the timely filing of a renewal application.

These and other developments are discussed in detail in this new edition of the *H-1B Handbook*.

We trust that this product continues to serve as an indispensable tool for H-1B employers and practitioners.

The Authors