

Blog Post

FY 2027 H-1B Cap Petition Filing Opens April 1: Key Considerations for Employers and Employees

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The release of H-1B lottery results has significant consequences for both employers and their foreign national employees. Although selection is welcome news, it does not confer H-1B status; it merely authorizes the employer to file an H-1B petition during the April 1–June 30 filing window. The H-1B petition must be approved by USCIS before an employee can obtain H-1B status.

While H-1B petition approval rates have exceeded 90 percent in recent years, approval is not automatic. USCIS has historically scrutinized H-1B petitions for issues, including whether an H-1B position qualifies as a specialty occupation — requiring at least a bachelor’s degree (or equivalent) in a field directly related to the role; whether the beneficiary possesses the required degree or equivalent credentials; whether a valid employer–employee relationship exists; and whether the beneficiary has maintained lawful immigration status.

While these adjudication issues remain relevant, recent developments in immigration law introduce additional considerations for employers and employees selected in the FY 2027 H-1B lottery.

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USCIS has recently released a revised Form I-129, which signals heightened scrutiny of wage-level selection for FY 2027 H-1B filings. Beginning April 1, petitioning employers must use the updated form, which includes new data collection questions that closely track the Department of Labor's prevailing wage determination criteria. Specifically, employers must now provide detailed information regarding the minimum education required for the H-1B position, the required field of study, the minimum years of experience required, whether the position has supervisory responsibilities, and whether the position requires any special skills. These factors directly correspond to those used by the Department of Labor to determine whether a position should be classified as Wage Level I, II, III, or IV.

The inclusion of these questions suggests that USCIS may more closely examine whether the wage level listed on the Labor Condition Application (LCA) is consistent with the job requirements. As a result, careful wage selection and internal consistency across the petition will be increasingly important in FY 2027 cap filings (as well as other H-1B petitions filed after April 1). Employers should ensure that the chosen wage level is well supported and defensible based on the position's actual requirements.

Impact of the \$100,000 Presidential Proclamation

Another major development affecting the FY 2027 cap season is the presidential proclamation issued on September 19, 2025, titled "Restriction on Entry of Certain Nonimmigrant Workers." The proclamation imposes a supplemental \$100,000 fee on certain new H-1B petitions and is currently scheduled to remain in effect until September 20, 2026. Although the proclamation is currently subject to ongoing challenges in court, it is expected to apply throughout the FY 2027 cap filing window.

Importantly, while the proclamation generally does not affect H-1B petitions requesting a change,

extension, amendment, or transfer of status for individuals already lawfully in the United States, it does apply to petitions requesting consular notification, including cases where the beneficiary is physically present in the United States but ineligible for a change or extension of status.

The proclamation has important strategic implications for FY 2027 H-1B cap filings. In prior years, employers could choose between requesting consular notification or a change of status. For FY 2027, however, filing a petition with a request for consular notification may carry a substantial financial penalty, making change of status filings the only viable option. Careful analysis of filing strategy will therefore be critical at the outset of the cap process.

Travel and Maintenance of Status Considerations

The practical necessity of filing FY 2027 H-1B cap petitions with a change of status request carries significant travel and maintenance of status implications. A change of status filing requires the beneficiary to remain physically present in the United States while the petition is pending. Departing the United States during this period generally results in abandonment of the change of status request and may convert the filing to consular processing — potentially triggering the \$100,000 supplemental fee. As a result, international travel may be difficult, if not impossible, for H-1B cap beneficiaries this summer depending on how and when the H-1B petition is filed.

Equally important is the requirement that the H-1B beneficiary be in lawful nonimmigrant status at the time of filing and through approval of the H-1B petition, as maintenance of status is prerequisite for change of status eligibility. For example, F-1 visa holders on OPT must remain employed and comply with applicable unemployment limits; F-1 visa holders using CPT must continue to pursue a full

course of study; and individuals in other nonimmigrant statuses must adhere to all terms and conditions of their visa classification. In addition, recent adjudicatory trends indicate that USCIS is closely scrutinizing criminal violations and, in certain cases, the beneficiary's country of birth and/or citizenship when assessing eligibility for a change of status. Any gaps in status, prior violations, or criminal history issues may affect eligibility for a change of status and should be carefully evaluated well in advance of filing.

Conclusion

Recent developments — including increased wage-level scrutiny, the potential application of a \$100,000 supplemental fee, and heightened travel and maintenance of status risks — have materially changed the filing landscape for FY 2027 H-1B cap season. For employers and foreign nationals selected in the lottery, careful planning, strategic filing decisions, and close attention to status compliance will be essential to minimize risk and ensure successful outcomes. For additional guidance regarding FY-2027 H-1B petition filings, please contact an Akerman Immigration Planning & Compliance team member of the Labor & Employment Practice Group.

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