



## ELIMINATE THE H-1B AND GREEN CARD CAPS!

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On July 27, 2023, USCIS [announced](#) that it will conduct a second round of selections for the FY 2024 H-1B lottery. An alert posted on the USCIS website stated that “We recently determined that we would need to select additional registrations to reach the FY 2024 numerical allocations. Soon, we will select additional registrations from previously submitted electronic registrations using a random selection process. We will announce once we have completed this second selection process and have notified all prospective petitioners with selected registrations from this round of selection that they are eligible to file an H-1B cap-subject petition for the beneficiary named in the applicable selected registration.” Attorneys have been notified of additional selections through their myUSCIS accounts throughout this past weekend.

Anecdotally, we have found that the selection rates in this second round of the H-1B lottery for some of our clients is slightly better than the selection rates in the first round. Still, selection rates in for this year’s lottery were much lower than those observed in prior years, and USCIS [indicated](#) that this was the result of a striking increase in the number of registrations, including multiple registrations for the same beneficiary. USCIS further [acknowledged](#) that “large number of eligible registrations for beneficiaries with multiple eligible registrations - much larger than in previous years - has raised serious concerns that some may have tried to gain an unfair advantage by working together to submit multiple registrations on behalf of the same beneficiary”, and committed to investigate and combat fraudulent registrations. When so few registrations were initially selected in this year’s lottery, news of a second round of selections likely comes as welcome news to prospective beneficiaries and U.S. employers alike. However, this additional round of selections is not the victory it seems because it is merely a reflection of an inherently flawed system.

In [previous blogs](#), we have advocated for the abolishment of the H-1B lottery, which in turn means that the H-1B cap should be abolished. If there is no cap, there is no need for a lottery. The lottery is an arbitrary and whimsical system that needlessly prevents U.S. employers from employing highly-skilled foreign workers they want that would help them remain competitive and profitable. In industries like tech and finance, there are an insufficient number of qualified U.S. workers to fill available positions. The fact that the number of registrations far outstrips the number of available visas is a function of the market and illustrates the level of demand for highly-skilled foreign workers. When the American Competitiveness in the 21<sup>st</sup> Century Act (AC 21) increased number of available visas to 195,000 in 2000, the cap was never reached. Artificially limiting the number of new H-1B petitions that can be filed in a fiscal year is thus not only a point of frustration for prospective beneficiaries, but also detrimental to the needs of U.S. businesses. The cap's detrimental impact on U.S. business interests is amplified by the fact that other countries have begun implementing more favorable programs for holders of U.S. H-1B visas. As analyzed by David Isaacson in a recent [blog](#), Canada announced a measure in June 2023 that will allow U.S. H-1B visa holders to “apply for a Canadian work permit, and study or work permit options for their accompanying family members”. The Canadian program styled as the “[H-1B visa holder permit](#)” is indeed unique as it has targeted the visa program of another country in the global competition for talent. By needlessly restricting the flow of highly-skilled workers into the country, the U.S. may soon begin to lose top talent to competitor countries.

Opponents of ending the H-1B lottery or increasing the cap sometimes suggest that the program is a source of cheap labor, and allowing more highly-skilled foreign workers to take up jobs in the U.S. would harm the employment prospects of U.S. workers. However, this contention is without merit. In a previous [blog](#) on this topic, we discussed a Center of Growth and Opportunity [paper](#) which found that highly-skilled foreign workers are “paid a wage premium of 29.5 percent” in comparison to similar U.S. workers. Another more recent [Cato Institute study](#) indicates that H-1B wages are in the top 10% of US wages. Moreover, as outlined above, there are insufficient qualified U.S. workers to meet the demands of employers in many industries. Rather than disadvantaging U.S. workers, highly-skilled foreign workers fill an important need in the market and allow U.S. businesses to remain competitive. Their

employment in the US economy results in job creation too.

Another often-raised objection is that limiting the number of H-1B workers will help to alleviate the green card backlog. However, any noncitizens currently waiting in the employment-based green card backlogs are already the beneficiaries of I-140 petitions and have a priority date. In order to be eligible to commence the green card process, a new H-1B worker would need obtain sponsorship by an employer, who would file a labor certification and I-140 petition on his behalf. The new H-1B worker would thus be assigned a later priority date, having no impact on anyone already in the backlog. Additionally, other types of nonimmigrant visas, such as L-1s and TNs, are not subject to a quota. If there is no concern about nonimmigrant beneficiaries of these visa types contributing to the green card backlogs, the same should be true of H-1B workers.

In reality, the green card backlog and the H-1B lottery are both parts of the same flawed quota system. Although the announcement of a second round of selections for the FY 2024 H-1B lottery may seem like cause for celebration, it is in fact a hollow victory for prospective H-1B workers and U.S. employers alike.

We call for the elimination of the H-1B caps as well as caps in the employment-based and family-based immigration categories. And we also call for the elimination of country caps. This is something that Congress can only do and should do on an urgent basis. There is no need to discriminate based on where a person is born, and per country limits become wholly irrelevant if there is no overall cap in any particular family or employment-based category. Caps and lotteries have no place in a modern immigration system. There are no caps for TN, L-1, O, P and R visa, and yet life goes on. The nonexistent caps in these nonimmigrant work visa categories do not result in the undermining of the US economy or the taking of US jobs. So why should the H-1B visa program be hobbled with an artificial cap of 85,000? When the unemployment rate is 3.6%, the US can only benefit with the skills, talents, creativity and enterprise of foreign workers who desire to succeed in the US for themselves and their families. Indeed, all immigrants who come to the US under the employment and family based systems can potentially benefit the US. The US is also not the only game in town as Canada has begun to directly compete with the US for talent. There is no need for foreign workers to remain in the US under a flawed and broken immigration system when another country's system is more rational, fair and dynamic. Due to the green card backlogs they are forced to

remain in the same jobs and not advance through promotions or form their own startups. Eliminating caps in the H-1B visa and the employment and family based green card categories will be a step in the right direction!