



News & Types: Immigration Monthly Updates

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Practices: Immigration

## **FY2025 H-1B QUOTA MET: FIRST SELECTION PROCESS COMPLETED - WILL THERE BE A SECOND SELECTION PROCESS?**

On April 2, 2024, U.S. Citizenship and Immigration Services (USCIS) announced that it had received enough H-1B quota registrations during the initial registration period to reach the fiscal year 2025 (FY2025) (October 1, 2024 to September 30, 2025) quota for the H-1B Regular Cap and Master's Cap. For this year's process, USCIS selected registrations for unique beneficiaries rather than looking at the employer who completed the registration. In this beneficiary-centric section, USCIS selected 120,603 registrations.

USCIS published this chart showing registration and selection numbers for fiscal years 2021-2025.

Cap Fiscal Year	Total Registrations	Eligible Registrations*	Eligible Registrations for Beneficiaries with No Other Eligible Registrations	Eligible Registrations for Beneficiaries with Multiple Eligible Registrations	Selected Registrations
2021	274,237	269,424	241,299	28,125	124,415
2022	308,613	301,447	211,304	90,143	131,924
2023	483,927	474,421	309,241	165,180	127,600
2024	780,884	758,994	350,103	408,891	188,400
2025	479,953	470,342	423,028	47,314	120,603 (as of 04/01/2024)

The chart shows a decrease in the overall total number of registrations this year, from 780,884 in FY2024 to 479,953 in FY2025. Most significantly, it shows a 38.6% reduction in eligible registration for FY2025. USCIS attributes this reduction to its extensive fraud investigations and efforts working with federal law enforcement to criminally prosecute individuals or entities who submitted a false attestation.

Selected FY2025 H-1B quota petitions must be properly filed with USCIS before June 30th. If USCIS does not receive (or approve) enough H-1B quota petitions to meet the statutory quota numbers of 65,000 for the

regular H-1B quota with an additional 20,000 for individuals who have earned a U.S. Master's or higher degree, a second selection process may occur. Last year, the second selection process occurred in late July.

Any updates on whether the USCIS will have to conduct a second selection process will be promptly shared in future Business Immigration Newsletters as soon as they become available.

### **NEW EXCHANGE VISITOR PROGRAM WITH JAPAN ANNOUNCED**

On April 19, 2024, the U.S. Department of State (DOS) published a notice in the Federal Register regarding a Memorandum of Cooperation between the governments of the United States and Japan to create a new Japan Specialist Program within the existing Exchange Visitor Program regulations (22 CFR part 62), including regulations applying to the Specialist category (22 CFR §62.26).

The notice indicates that the DOS is waiving the regulation that limits participation in the Exchange Visitor program for Specialists to one year, allowing participants to conduct their programs for up to 36 months on a J-1 visa. This will promote closer cooperation between the people of Japan and the people of the United States.

During the exchange program, participating exchange visitors from Japan will share their specialized knowledge of the Japanese language and education at U.S. community-based, non-profit organizations, U.S. Government offices, secondary schools, or post-secondary academic institutions offering Japanese, and similar types of institutions to increase U.S. local communities' understanding of Japanese culture and language. Participating exchange visitors, experts in Japanese culture and language, will better understand U.S. culture and society and promote mutual enrichment by enhancing U.S. knowledge of Japanese culture, language, and educational systems.

### **SENATORS SEEK GUIDANCE REGARDING INTERNATIONAL STUDENT ATHLETE INCOME**

On April 30th, 2024, a bi-partisan group of U.S. Senators sent a letter to the US Department of Homeland Security (DHS) Secretary Alejandro Mayorkas requesting a written update on the Secretary's efforts to resolve the uncertainty around the new NCAA NIL (name, image, likeness) policies as applied to international student-athletes.

The Senators expressed discontent that Secretary Mayorkas had not clarified whether and to what extent the NCAA's relaxed NIL rights applied to international student-athletes. The lawmakers noted that Mayorkas vowed to address the issue in congressional testimony last year but has yet to follow through.

Until 2021, college athletes were generally banned from earning revenue, even from their image. In 2021, the NCAA changed course and created the NIL framework, which now covers college athletics. NIL are the three elements that make up the "right of publicity," a legal concept used to prevent or allow the use of an individual to promote a product or service.

Under the NCAA's June 2021 interim policy, athletes can engage in NIL activities and take advantage of opportunities using their name, image, or likeness if they follow the state's laws where their school is located. Schools must ensure these activities comply with state law. Athletes in states without NIL laws can still participate in NIL activities without breaking NCAA rules. In addition, athletes can seek professional service providers for their NIL activities.

However, for international student-athletes in the U.S. on F-1 student visas, the NIL framework conflicts with U.S. visa rules, which limit international students' ability to work in the U.S. The NCAA's policy raises questions about whether monetizing one's NIL rights constitutes "work." Lawmakers previously asked Secretary Mayorkas for clarification in a March 2023 letter prompting him to testify a week later that his agency was "looking at the issue carefully" and hoped to "move as quickly as we can."

### **INTERNATIONAL GRADUATE STUDENT LAWSUIT AGAINST DHS SETTLED**

A Federal lawsuit brought in the Western District of Washington by a group of international student graduates against DHA has reached a settlement agreement to dismiss the suit.

The plaintiffs were international students who graduated from U.S. colleges and universities and obtained temporary work authorization through the Optional Practical Training (OPT) program. Through the program, they all received employment offers from staffing agencies that promised to connect students with information technology firms for additional fees, according to the complaint. The students said, "The OPT companies rarely marketed the students and left them waiting without an end client."

These OPT companies were ensnared in a DHS investigation into OPT fraud. They were accused of producing fake job offers for international students who needed a U.S. employer to stay in the country. Government officials sanctioned the OPT companies, and DHS also found that the students were ineligible to change their immigration status from F-1 to H-1B classification due to fraud.

The international students said that DHS also branded them as willing accomplices and deemed them inadmissible, telling them they would have to leave the U.S. and request a waiver of inadmissibility before seeking another visa. To do this, the students alleged they would have to confess to visa fraud when they had been unaware of the OPT companies' scam. The workers accused DHS of violating the Administrative Procedure Act's (APA) notice-and-comment provisions by failing to provide them a chance to respond to the inadmissibility charges.

The notice of stipulated dismissal indicates that DHS had been unable to find any record reflecting "a current inadmissibility finding" against any of the more than eighty plaintiffs. However, the notice does not "preclude DHS, its component agencies, or any other U.S. government agency from evaluating plaintiffs' admissibility at any time in the future." According to the notice, the suit was dismissed without prejudice, and neither party has admitted any wrongdoing.

### **JUNE 2024 VISA BULLETIN UPDATE**

The DOS recently issued the June 2024 Visa Bulletin.

For *employment-based immigration*, only the following foreign nationals may apply for permanent resident status through adjustment of status ("AOS") or have their AOS application approved if all qualifying and documentation requirements are met in June 2024. Also, the following foreign nationals who will complete the Immigrant Visa processing at a U.S. Consular Post and who have submitted all the required documentation become eligible to have their interview scheduled in June 2024.

#### **First Preference**

- Persons eligible for the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or workers recognized for their Extraordinary Ability) who were born in any country other than India or China – Remains Current.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or workers recognized for their Extraordinary Ability) whose priority date is before September 1, 2022 – no change since April 2024.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 1st preference category (Multinational Managers/Executives, Outstanding Researchers/Professors or Workers recognized for their Extraordinary Ability) whose priority date is before March 1, 2021 – no change since April 2024.

### **Second Preference**

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before January 15, 2023 – no change since April 2024.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before February 1, 2020 – no change since April 2024.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 2nd preference category (Advanced Degree Professionals, workers recognized for their Exceptional Ability, or individuals qualifying for a National Interest Waiver) whose priority date is before April 15, 2012 – no change since April 2024.

### **Third Preference**

- Persons born in any country other than India or China having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before November 22, 2022 – no change since April 2024.
- China-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before September 1, 2020 – no change since April 2024.
- India-born persons having an approved Immigrant Petition (Form I-140) in the employment-based 3rd preference category (Professionals or Skilled Workers) whose priority date is before August 22, 2012 – a seven-day advancement from May 2024.

In its Notes section, the DOS indicated the likelihood of further visa priority date regression in the employment-based Second Preference and Third Preference World categories and Mexico and the Philippines categories in July 2024. The DOS stated that these retrogressions may be necessary to keep the number of employment-based immigrant visas (aka green cards) being issued within the annual statutory numerical allocations.

Additionally, if the dates retrogress, it is unlikely that they will significantly advance for the remainder of the government's fiscal year, which ends on September 30, 2024.

## **MFEM NEWS**

### **Bob White To Present with DOL Officials at Annual AILA Conference**

Bob White, co-chair of the Masuda Funai Immigration Group, will be presenting with members of the U.S. Department of Labor's Office of Foreign Labor Certification (OFLC) during the DOL Open Forum at the American Immigration Lawyers Association's (AILA) Annual Conference being held this year in Chicago.

During the Open Forum, Mr. White will discuss implementing the new PERM system, PERM processing delays and issues with prevailing wage determinations with the DOL officials. New this year, Mr. White will also review some H-1B Labor Condition Application (LCA) compliance issues with the DOL officials.

*Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.*