

## Q&A: Where We Stand After the H-1B Second Lottery

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The [H-1B nonimmigrant visa](#) is one of the most popular work authorized visa options among U.S. employers, but the overwhelming demand exceeds the limited supply since H-1B visas are subject to an annual cap of 85,000 visas, with 20,000 specifically reserved for individuals with a U.S. Master's degree or higher.

When U.S. Citizenship and Immigration Services receives more H-1B registrations than there are visas available (which has been the case for [more than a decade](#)), the agency randomly selects who can file an H-1B petition through a lottery system.

After USCIS conducted a [second H-1B lottery selection](#) for Fiscal Year 2025, our inboxes were flooded with questions from clients. Here are our responses to some of the top questions we received.

### A quick recap on this year's H-1B lottery

Before we get into what's next, let's quickly recap where we've been.

USCIS opened H-1B cap registration for Fiscal Year 2025 from March 6 through March 25, 2024. That same week, USCIS began sending selection notices and starting April 1, petitioners with selected beneficiaries were able to submit H-1B petitions on their behalf. The overall registration selection rate for the first lottery was 25.6%.

In late July, USCIS announced that it would conduct a second H-1B registration lottery out of the previously submitted registrations. The second lottery only applied to the regular cap as the FY 2025 master's cap numerical allocation had already been met. The second lottery [increased the selection rate](#) by 3.1%, resulting in a 28.7% total registration selection rate.

### What does it mean if a beneficiary was selected in the second lottery?

So, what's next for those who have been selected? Well, now it's time to verify that all the information provided at the time of registration is still accurate or if the case needs to be updated. If it

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remains accurate, then we're submitting Labor Condition Applications to the Department of Labor, getting those certified and filing the H-1B petitions with USCIS.

There is a 90-day filing window within which petitioning employers can submit H-1B petitions. The window ends November 7, 2024.

It's important to note that being selected in the lottery really is just the first step. Being selected in the lottery merely allows the petitioning employer to file an H-1B petition on behalf of the selected employee in which the petitioner must establish eligibility for H-1B status.

### **What if a beneficiary was selected, but they had multiple employers register for their H-1B?**

Something new this year is if a beneficiary is selected by one petitioner, they are selected by all.

In short, if a foreign national received competing job offers, and multiple employers submitted registrations on their behalf, then the individual gets to decide which employer they wish to proceed with and which employer will ultimately file an H-1B petition on their behalf.

Let us be clear though: the individual can't just take their selection notice to any employer and apply for a job. The petition must be filed by an employer who submitted a registration for that individual.

### **What if a beneficiary was selected, but circumstances have changed since the registration period?**

Given the amount of time that passes between preparing for H-1B registrations and the selection period, especially in the case of a second lottery, no doubt circumstances change.

There are individuals who may have been on time-limited work authorized visa statuses, such as F-1 students on Optional Practical Training whose work authorization may have lapsed and they've now changed status, gone back to school or departed the U.S.

We've been talking to organizations to see if there is still interest in sponsoring those individuals. For some, there certainly is and they've kept in touch knowing that the lottery remained open and there was a chance that a selection could come through. But there are certainly employers who have already severed ties with beneficiaries whose employment authorization lapsed and therefore will not proceed.

### **What does it mean if an employee wasn't selected in the first or second lottery?**

For those not selected, their registration remains active and in "Submitted" status. USCIS will take in the petitions from the second lottery selections and determine whether they now have a sufficient number to close the annual cap. Until that number is reached, the cap will potentially remain open.

When the annual cap is met and USCIS is no longer accepting H-1B petitions, the status of those cases will change from "Submitted" to "Not Selected."

### **Will there be a third H-1B lottery for FY 2025?**

It is extremely unlikely that there will be a third round of H-1B selections this year. We were honestly surprised to see a second lottery considering that USCIS has met the annual cap in the first lottery for the past few years. Maybe organizations were a bit more optimistic in March when registering than in the summer when having to file the petition. But given the fact that we only saw a 3.1% selection rate with the second round, we're likely at that annual cap.

At this point, we're advising employers to plan as if their unselected employees will not be selected and to move forward with any other potential options available. For example, some employees may be eligible for [other visa statuses](#), such as O-1, TN, H-1B1 or E-3. In addition, some employees may be eligible to work as a dependent of their spouse, if they hold certain immigration statuses.

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