

# Big Changes as Employers Prepare to Hire Foreign Workers

**By Lidia Ebersole & Stephanie Olivera Mittica**

For employers seeking to hire foreign workers in the near future, the recent changes to the H-1B program and the presidential Administration will certainly present a lot of questions. On January 7, 2021, the U.S. Citizenship and Immigration Services (“USCIS”) unveiled a rule that finalizes the previously-proposed changes to the longstanding H-1B lottery and affects how employers should prepare for hiring of H-1B workers in the upcoming fiscal year.

The H-1B visa program allows U.S. employers to fill labor shortages in positions requiring highly skilled or highly educated workers. To protect U.S. workers, the H-1B program has an annual numerical cap. Additionally, U.S. employers are required to pay the prevailing wage to the foreign workers. Because of the high-popularity of the H-1B program, in the last decade, USCIS has consistently received more H-1B petitions than the annual allocation of visas. To allow USCIS to select which visa petitions should be accepted for review, various measures were implemented, including the H-1B visa lottery, which served as an objective chance-based method of selecting which employers can benefit from the oversubscribed program.

On October 29, 2020, the Administration proposed to eliminate the H-1B visa lottery and instead select the petitions based on the salary offered. This rule has just been finalized with the result being that the employers who offer the highest wages to their prospective foreign workers would have the highest chance of getting their petitions accepted.

This sweeping change will affect the petitions that will be submitted in March 2021. It significantly changes how employers prepare for hiring of H-1B workers and will require employers to increase the salaries offered to potential H-1B workers to increase their chances of being selected for the H-1B program.

While challenges to the rule are anticipated, it is uncertain whether the new Administration will act to change the rule before the March petition submission date.

Roetzel attorneys, Lidia B. Ebersole and Stephanie Olivera Mittica, will guide employers through the uncertainty that surrounds the upcoming fiscal year.

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