

H-1B Shift Draws More Applicants With Advanced US Degrees

By **Nicole Narea**

Law360 (April 15, 2019, 8:36 PM EDT) -- U.S. Citizenship and Immigration Services saw the number of H-1B skilled worker visa applicants with advanced degrees from U.S. institutions spike this fiscal year after the agency implemented a new visa lottery system offering them more favorable odds.

The agency tweeted Friday that, according to preliminary data, the number of petitions from individuals with master's or higher degrees from U.S. institutions, who are exempt from the congressionally mandated visa cap of 65,000, increased by more than 11% over the previous fiscal year. The numbers, however, still fell shy of the 16% increase the agency had projected in January.

A USCIS final rule issued in January had changed how the agency selects those eligible to move forward with their H-1B visa applications after the visa cap has been reached. It requires the agency to conduct two visa lotteries: the first including all petitioners subject to the cap as well as U.S. advanced degree holders exempt from the cap, and the second including only those with the advanced degree cap exemption.

"Our efforts are improving the H-1B program and increasing the number of U.S. advanced degree holders who are selected for the limited number of visa slots," the agency tweeted. "We are fulfilling the President's mandate under the Buy American and Hire American Executive Order to ensure H-1B visas are awarded through a more meritorious selection process."

That executive order, issued by President Donald Trump in April 2017, outlined goals of reducing illegal immigration, detecting and preventing immigration fraud, and increasing information-sharing among federal agencies in order to increase employment of U.S. workers and raise their wages.

Paul Virtue, a partner at Mayer Brown LLP, said the changes to the H-1B lottery are consistent with the president's directive to reserve visas for the "best and brightest and highest paid."

Virtue noted, however, that the policy could have an adverse effect on companies trying to fill entry-level positions that do not require advanced degrees. That is particularly true in the information technology field, which has been hit with worker shortages and in which only specialized bachelor's degrees are required, Andrew Greenfield, a partner at Fragomen, Del Rey, Bernsen & Loewy LLP, said.

Some attorneys have also questioned whether the new cap selection process complies with the H-1B statute.

The act specifically provides a cap exemption for up to 20,000 noncitizens who have earned a master's degree or higher from a U.S. institution. After the 20,000 cap is met, such noncitizens will be subject to the 65,000 cap for all H-1Bs.

Greenfield said the statute does not permit the government to include cap-exempt U.S. advanced degree holders in the initial lottery with all other beneficiaries.

"By just throwing them into the mix with everybody else, it's contrary to the exemption," he said.

The January final rule had also introduced changes that will go into effect in April 2020. H-1B petitioners will have to complete a simple online registration form with USCIS. Of those registered, only those selected by lottery will proceed to provide full visa applications.

--Editing by Aaron Pelc.