



GMS Flash Alert

Immigration Edition

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United States - FY 2023 H-1B Regular Cap and Master's Cap Met

On August 23, 2022, the United States Citizenship and Immigration Services (USCIS) announced that the agency has received a sufficient number of petitions reaching the congressionally mandated 65,000 H-1B visa regular cap for fiscal year (FY) 2023.¹ The agency has also determined that it has reached the 20,000 H-1B visa advanced degree exemption (master's cap) for FY 2023.² This announcement concludes the selection of H-1B cap-subject petitions for this fiscal year.

WHY THIS MATTERS

With the USCIS' announcement concluding the selection of H-1B cap-subject petitions for this fiscal year, individuals who wish to benefit from this visa type and are cap-subject will have to wait until the H-1B cap initial registration period opens for FY 2024 to be submitted into the lottery.

Employers are encouraged to work closely with immigration counsel to identify alternatives for employees who will exhaust their status in the United States prior to the next H-1B cap registration and filing periods.

For H-1B cases selected this fiscal year, employers should also consider using the USCIS premium processing service to expedite adjudication for petitions requiring notice of urgent approval (for related coverage, see [GMS Flash Alert 2022-073](#), April 1, 2022). This would include any H-1B cap applicants who face the possibility of losing work authorization due to lengthy USCIS adjudication times as experienced in previous H-1B cap cycles.

Background

Each year, 85,000 new H-1B visas are issued – referred to as “the H-1B cap.” Within the H-1B cap, 20,000 H-1B visas are reserved for individuals holding a Master's degree or higher from a qualifying U.S. university at the time of filing. Employers register for the H-1B lottery by completing a short online form with information about the company and the prospective H-1B candidate. The H-1B lottery is conducted on the electronic registrations submitted during the initial registration period and only those with selected registrations will be eligible to file complete H-1B cap-subject petitions with the USCIS.³

This year, the initial registration period for the H-1B cap opened on March 1, 2022 and ended on March 18, 2022. The USCIS then completed its selection process on March 28, 2022, with the initial filing period running from April 1, 2022 to June 30, 2022.⁴ (For prior coverage, see [GMS Flash Alert 2022-022](#), February 1, 2022.)

Last year, the USCIS announced two additional lottery selection cycles after the initial selection process, as the first two H-1B cap filing periods did not yield enough petitions to meet the annual quota of 85,000.⁵ However, USCIS' August 23, 2022 announcement indicates that the agency received a sufficient number of petitions to meet the annual 85,000 quota after the initial filing period this fiscal year.

FY 2023 Cap Selections and Other H-1B Petitions

With the USCIS' announcement that the agency has received enough H-1B cap petitions to meet the annual quota of 85,000, the agency also confirmed that it has completed sending non-selection notifications to cap registrants' USCIS online accounts.⁶ The status for registrations that were properly submitted in this year's H-1B cap electronic registration process, but were not selected, have now changed to: "Not selected: Not selected – not eligible to file an H-1B cap petition based on this registration."

The USCIS will continue to accept and process H-1B petitions that are not subject to the cap, including:

- Petitions requesting an extension of the amount of time a current H-1B worker may remain in the United States;
- Petitions requesting a change of the terms of employment for current H-1B workers;
- Petitions allowing current H-1B workers to change employers;
- Petitions allowing current H-1B workers to work concurrently in additional H-1B positions; and
- Petitions allowing foreign nationals to work for cap-exempt employers.

KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 See United States Citizenship and Immigration Services, "[USCIS Reaches Fiscal Year 2023 H-1B Cap](#)" (August 23, 2022).
- 2 Id.
- 3 See the USCIS webpage "[H-1B Cap Season](#)."
- 4 See the USCIS webpage "[FY 2023 H-1B Cap Season Updates](#)."
- 5 See the following issues of *GMS Flash Alert*: [2021-290](#) (November 23, 2021); [2021-208](#) (August 2, 2021); and [2021-099](#) (April 1, 2021).
- 6 See Supra Note 1.

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Please Consider Participating in the KPMG Global Assignment Policies and Practices (GAPP) Survey

Participation in the [survey](#) allows you to benchmark your organization in relation to other survey participants on numerous aspects of a global mobility program including: assignee selection and assessment, assignment preparation and planning, automation and robotics, talent and performance management, assignment compensation and allowances, administration and outsourcing, immigration compliance, the use of data and analytics, assignment management technology as well as tax reimbursement approaches. [Click here](#) to begin the survey.

Key highlights of the 2022 KPMG Global Assignment Policies and Practices Survey will be made available later in the year.

Contact us

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The information contained in this newsletter was submitted by the KPMG International member firm in Canada.

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