

## **THE H-1B VISA DILEMMA: MARCH MADNESS COULD BRING H-1B SADNESS. BY: David H. Nachman, Esq., Michael Phulwani, Esq. and Rabindra Singh, Esq.**

The use of the term "lottery" is very deceptive in the context of a discussion about the H-1B professional and specialty occupation work visa. We often receive inquiries from potential H-1B beneficiaries who contact our offices asking us: "Where should I buy my H-1B Visa 2015 lottery ticket?" or "I want to get myself into the 2015 H-1B Visa lottery - How do I do that?" Reference to the "H-1B Lottery" is really a bit of a misnomer . . .

To shed some light here, the H-1B visa petition process is nothing like buying a lottery ticket. In fact, the preparation of the H-1B visa is just like the preparation of any other nonimmigrant work visa petition. The difference is that there is a specific "cap" or "limitation" on the number of H-1B nonimmigrant visas that are made available by the government each fiscal year. If the number of H-1B petitions that are submitted exceeds the limitations then the H-1B petitions that are submitted are aggregated and submitted for adjudication using a process called "random selection".

The process of the H-1Bs being aggregated and then submitted to "random selection" was officially referred to by the USCOS as the H-1B "Random Selection" process. However, in several press releases and numerous articles about H-1B visas, this process was referred to as a "Lottery" or "Visa Lottery". These words have come to be recognized as "terms-of-the-art" over time. With this understanding about what the "Lottery" terminology really means, we can now discuss how the Lottery process really works. This information is quite helpful to H-1B Employer and Employee hopefuls so that they can understand the true probability of H-1B success assuming that a very significant number of H-1B visas are submitted on March 31st 2014 for the April 1st 2014 H-1B visa filing deadline.

When the economy was strong, in 2008, there was an H-1B visa lottery for the fiscal year 2009 H-1B visa quota. On or about April 1st 2008, the USCIS received approximately 163,000 H-1B nonimmigrant professional and specialty occupation petitions for a cap-subject number of about 85,000 (the 65,000 regular U.S. Bachelor's equivalency H-1B quota and the 20,000 U.S. Masters Degree quota).

The USCIS monitored the intake of the H-1B petitions and proceeded to separate the petitions into two (2) lots. One lot was for H-1Bs with a U.S. Master's Degree. The second lot was for H-1Bs with

the U.S. equivalency of a Bachelor's Degree. Each petition was tagged with a special identifying number. The USCIS then ran a random algorithm on the submissions. First, a random selection process was conducted for the U.S. Masters Degree quota petitions. Those petitions chosen were placed into the processing cue. If the case was being premium processed, a receipt notice was issued within a week or two. If the case was not being premium processed, it could take many weeks and sometimes months before the employer would get a receipt.

If the U.S. Master's petitions were not selected for the U.S. Masters Degree quota then they were "spilled-over" into the general quota pool. After the U.S. equivalency of the H-1B general pool was created, another random algorithm was run on that pool of H-1B visas in order to determine which H-1B visas would be designated under the general quota cap. Those petitions that were chosen in the random selection/lottery for the U.S. Bachelor equivalency H-1B pool were placed into the processing cue. As with the U.S. Master's Degree pool, if the case was being premium processed, a receipt notice was issued within a week or two. If the case was not being premium processed, it could take many weeks and sometimes months before the employer would get a receipt. According to the USCIS, all of the selected petitions were cued for processing (and I suppose that we just have to take their word for it).

Assuming that "history repeats itself", the following is the way that the visa lottery for the 2014-2015 H-1B visas will work for H-1B visas sent to the USCIS during the initial five (5) business days (i.e. from Tuesday, April 1st, 2014 until Monday, April 7th, 2014) following the April 1st 2014 H-1B nonimmigrant visa deadline:

**Step 1:** First, the USCIS will receive H-1B petitions and label them and identify each of the petitions with a unique identifier. This is the number or character that would be used for the random selection process. Once the H-1B is labeled, the USCIS will group the overall petitions into two pools. One pool will be the U.S. Master's Degree quota and the other pool will be the equivalency of a U.S. Bachelor's Degree.

**Step 2:** If there are more than 20,000 petitions received in the U.S. Masters Degree quota, then USCIS will conduct a computer generated random selection process or lottery taking into account all of the H-1B U.S. Master's Degree petitions.

**Step 3:** All of the H-1B petitions filed under U.S. Master's Degree quota that were NOT selected in the lottery or random selection will be placed into the pool of petitions received as U.S. Bachelor's equivalency quota H-1B visa petitions.

**Step 4:** If the total number of petitions in the combined pool (consisting of the U.S. Master's Degree spillover and the U.S. Bachelor's Equivalency pool) are over 65,000 petitions (number to be adjusted for Singapore and Chile H-1B1 Free Trade Agreement Visas), which is the cap limit, then a computer generated random selection process or lottery will be conducted on the pool to identify petitions that qualify for consideration under the U.S. Bachelor's equivalency quota cap limit.

**Step 5:** USCIS will send the list of all selected petitions to the service centers or process the cases in one service center. The USCIS service center(s) will proceed with H-1B nonimmigrant visa processing. If the case is being premium processed, a receipt notice should issue within a week or two. If the case is not being premium processed, it could take many weeks and sometimes months for the employer to get a receipt.

**Step 6:** All the H-1B nonimmigrant visa petitions that were not selected in the random selection process or lottery will be returned to the employers or the legal representatives along with the fees. Employers and Employees have been warned . . . if there were duplicate filings for a same prospective H-1B employee by the same H-1B employer (identified by the same Employer Identification Number) then the fees will be returned.

**Step 7:** USCIS will inform all selected petition holders of their case number for tracking purposes during processing. This number will be assigned when the receipt is issued. As previously mentioned, as many of our clients are eager to know if their cases have been chosen for processing in the lottery, the NPZ Law Group encourages the use of the premium processing procedure to ensure that a receipt notice is provided by the USCIS as quickly as possible.