Many Indian students badly hit by low selection rate in H-1B visa lottery

Ishani Duttagupta | TNN | Apr 12, 2023

The highlights of the lottery for H-1B work permit visas by the United States Citizenship and Immigration Services (USCIS) for the fiscal year 2024 has been the low selection rate and high number of applications.

Although USCIS has not yet announced the total registrations received for this year's H-1B cap, experts anticipate that the number may be a whopping 600,000-650,000 registration towards the 85,000 visas granted; in view of, among the other factors, the pent-up demand from last year.

"Given that Indian nationals are one of the largest beneficiaries of the H-1B programme, they were significantly affected. Looking at the data from our firm, the H-1B selection rate was only about 15%. It is also certain that USCIS received a very high number of duplicate registrations; which is a practice that has disadvantages for everyone," says Manjunath Gokare, an immigration lawyer based in Atlanta, Georgia.

Min Kim, partner and attorney at Chugh, LLP, Edison, New Jersey, too, says that the main takeaway from the results of the H-1B cap lottery for FY 2024 is that chances are high that a new all-time record has been set for the total number of cap registrations submitted for beneficiaries this year.

"Based on anecdotal evidence received thus far, and the comparative low percentage amounts of successful selections, it is widely anticipated that the USCIS received much more than the 480,000+ H-1B cap registrations received in the last year's lotter," he said.

"Most, if not all, of the beneficiaries who were not selected in last year's then-record lottery, provided they remained eligible, were going to be included in this year's lottery. Thus, this means we have a brand new batch of foreign nationals that were going through the lottery process for the first time, plus the ones from last year who were not selected," said Kim.

A snowball effect is likely with the total numbers of registrations for the H-1B cap getting larger and larger each subsequent year.

Worries for Indian students in the US

Among the applicants for the H-1B visa lottery, who have not been luck enough to be selected and are facing disappointment, many are Indian students who are in the US and after having graduated and now working on the optional practical training (OPT) period.

"It is always sobering to see the aftermath of hopeful foreign national applicants who are essentially putting all their eggs in the H-1B cap basket only to be let down repeatedly. I can think of a handful of beneficiaries already, and most of them form India, who have entered their names into the H-1B cap lottery for three years already – starting from the time they first attained their 12-month OPT employment authorization document

(EAD) all the way through the STEM [science, technology, engineering, or maths] extension of their OPT – but continually have faced disappointment when the results of the lottery have been announced each year," Kim said.

The H-1B registrations of such students were never selected in the lottery, despite them earning a US mater's degree which gives them advantage of the advanced degree exemption, under the H-1B cap, of 20,000 additional visas thus increasing the chances of selection.

"A lot of these individuals have since been forced to return home to India and thankfully, because technology and remote work is what it is today, they have continued working for these same employers from a remote work standpoint. But it is not the same and the ultimate goals in life for them and their families is to carve out a slice of the American dream by being sponsored for an H-1B cap petition," Kim added.

Many Indian students who were on OPT and hoping to transition to H-1B, but have not been lucky in the lottery, may now resort to Day-1 curricular practical training (CPT); which is for overseas students holding an F-1 student visa and actively studying; for continued employment in US and maintenance of status, feels Gokare.

"Students as well as those on dependent categories such as H-1 and L-2 are affected when they are not selected in the lottery. F-1 students are impacted the most, especially those who are running out of their OPT time window. Students still on the first year of post completion OPT can get two more years of STEM OPT (if they have graduated from STEM programmes) and may as such have two more attempts remaining to try for H-1B. However, those nearing the end of STEM OPT may have to consider the less than suitable option of enrolling again in universities that offer Day 1 CPT," he added.

For students who have a master's or higher degree in any of the STEM streams from an accredited institution in the US or are on the verge of earning that master's degree prior to the day when the H-1B cap petition is filed, there are two opportunities at applying for the H-1B cap lottery.

"Since 20,000 additional H-1B cap numbers are available for those who fit within this profile, having such a master's education from a qualifying college or university in the US should definitely help with one's chances," Kim said.

He added that if an F-1 student has a degree in one of these academic fields, then they should speak with the designated school official (DSO) at their university's international students office and see if a 24-month extension of their OPT programme can be done.

"If an OPT extension is not possible, either because the 24 months have already been utilized or perhaps the F-1 student's degree achievements do not qualify, then perhaps a change to another visa classification can be explored. If the Indian F-1 student is married, and his or her spouse is the principal beneficiary of their own work visa category like an H-1B or L-1, then the F-1 student can apply to change visa status to an H-4 spouse or L-2 spouse, respectively."

The L-2 visa is, in fact, very attractive because USCIS has recently changed the interpretation to immediately grant work authorization to an L-2 spouse, following which they do not even need to apply for an EAD card to gain employment authorization.

Another visa that might potentially be available to Indian students, who may not have been lucky in the H-1B lottery, is o-1 for those of extraordinary ability.

"Granted the O-1 is very exclusive and not many foreigners, whether Indian or not, qualify for this merit-based visa category. But if the F-1 student has a rather exemplary record of monumental achievements in his or her respective field of expertise, the O-1 might be worth exploring," Kim said.