H-1B updates: Weighted lottery, H-1B fee, entry restrictions, social media screening, travel restrictions

Analysis | January 5, 2026

On December 29, the U.S. Department of Homeland Security published the Final Rule *Weighted Selection Process for Registrants and Petitioners Seeking to File Cap Subject H-1B petitions*. The Final Rule will take effect on February 27, just days before the opening of the next H-1B cap lottery registration period.

This rule, together with a recent Presidential Proclamation restricting entry of certain nonimmigrant workers, represents a dramatic change in the operation of the H-1B program.

Here are the major changes that will take effect:

- A weighted selection process for the H-1B cap lottery.
- A $100,000 entry-related fee for certain H-1B petitions.
- New travel and entry restrictions affecting certain foreign nationals seeking to enter the United States.
- New social media vetting for all foreign nationals seeking to enter the United States as H-1B workers.

These changes are expected to affect cap planning, hiring timelines, and global mobility strategy. Each is discussed in more detail below.

Weighted selection process

Instead of the previous random selection process, the U.S. Citizenship and Immigration Services will now prioritize selection of H-1B registrations based on the wage level associated with the offered position, as determined under the Occupational Employment and Wage Statistics system.

Simply put, higher-paid roles will receive more "entries" in the lottery pool than lower-paid roles, thus increasing the probability that registrants for higher-paid roles will be selected. Registrations for positions whose OEWS wage level is IV will be entered four times in the selection pool. Registrations for positions at wage level III will be entered three times; registrations for positions at wage level II will be entered twice; and registrations for positions at wage level I will be entered once.

The DHS has acknowledged that this is a significant change to the selection procedure, and reflects an emphasis on high-skill, high-wage H-1B employment.

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Employers seeking H-1B employees should review job descriptions, ensure that their positions are in the appropriate OEWS level, and determine whether changes should be made before March.

Entry restrictions and $100,000 fee

The Presidential Proclamation linked above imposes new restrictions on the entry of certain nonimmigrant workers, including H-1B beneficiaries. A $100,000 fee may apply to certain new H-1B petitions where the beneficiary is outside the United States and requires consular processing or entry to activate H-1B status.

This requirement does not apply to most extensions, amendments, or change of employer petitions for individuals who are already in H-1B status and are in the United States. It also does not apply to most change of status petitions for those in a valid non-immigrant status who are physically present in the United States at the time of filing through adjudication. National interest exceptions may be available, but these are discretionary and narrowly applied.

Employers should take this $100,000 fee into account in their workforce planning and budgeting discussions.

The fee is the subject of multiple lawsuits, including challenges brought by business groups and state governments. However, a federal judge in the District of Columbia recently upheld the fee, finding that the President has "broad authority to regulate entry into the United States for immigrants and nonimmigrants alike." In that case, the fee had been challenged by the U.S. Chamber of Commerce and the Association of American Universities.

Another challenge, brought by the attorneys general of California and Massachusetts, and 18 other states, is currently pending in federal court in Massachusetts.

At present, the $100,000 fee and entry restrictions remain in effect, so employers should assume that the fee applies where required, while closely monitoring developments.

Travel restrictions and entry risk considerations

In addition to the $100,000 fee, employers must also consider new travel restrictions that may affect the ability of certain foreign nationals to enter the United States, even with approved H-1B petitions.

An approved H-1B petition does not guarantee visa issuance or entry. Nationality-based or regional entry restrictions may apply depending on current Presidential actions and agency guidance. Travel timing, consular processing location, and contingency planning are now more important than ever.

Expanded social media screening and resulting delays

As of December 15, 2025, H-1B visa applicants are subject to expanded social media vetting when applying for H-1B visas at U.S. consulates abroad. After the announcement by the U.S. Department of State, U.S. consulates (primarily in India) canceled H-1B visa interviews to put into place these enhanced vetting protocols. As a result, H-1B visa applicants and their dependents should anticipate longer H-1B visa processing times, and employers should prepare for potential disruptions to their foreign national workforce resulting from these delays.

Conclusion

These developments reflect a clear shift toward prioritizing higher-wage H-1B roles while simultaneously introducing significant new financial, travel, and entry-related barriers to hiring talent from abroad.

Employers should plan now for these changes — by reviewing and adjusting as needed wage structures, filing timelines, candidate location, and global mobility planning.

With respect to wage levels, employers should do the following before the Fiscal Year 2027-28 cap filing period (which begins in March 2026):

- Strategically review wage offers and prevailing wage determinations, given the new H-1B weighted selection framework.
- Confirm that wage levels are accurately supported by the job duties, level of employment, and internal documentation.
- Coordinate early with Human Resources, compensation, finance, and leadership teams to ensure that your wage strategy is consistent with hiring priorities and budget realities.

If you would like assistance assessing how these changes affect your upcoming H-1B filings, overseas hiring, or risk exposure under the new rules, please contact any member of Constangy's Immigration Practice Group.