



MEMORANDUM

TO: Nonimmigrant Visa Applicants
FROM: Seyfarth Shaw Business Immigration Group
RE: Requirements for U.S. Master's Degree H-1B Cap Applicants

This memorandum is written to individuals who are being sponsored for an H-1B petition under the H-1B quota (or "H-1B cap"), and who will apply under the "Master's" H-1B cap lottery based on having completed a U.S. Master's degree or a higher degree.

Background on the H-1B quota

There is an annual limit on the number of H-1B petitions that USCIS can approve during the government's fiscal year (beginning October 1 and ending September 30). The H-1B cap is 65,000 (of which about 6,800 are reserved for nationals of Chile and Singapore under Free Trade Agreements with those countries). Beginning in 2020, USCIS implemented a registration lottery. Under this system, employers register the individuals seeking H-1B status online in March and selections are announced in early April. It is possible that USCIS may also run an additional lottery later in the year, if there are still visas available for the fiscal year.

There is an additional quota of 20,000 H-1Bs reserved for persons holding a master's degree (or higher degree) awarded by an accredited college or university in the United States. To be eligible for the "master's cap," the employee must have completed the master's degree program prior to the filing date.

If USCIS receives more than 20,000 H-1B petitions towards the so-called master's cap, a separate lottery process is applied. USCIS will apply the random selection process to the regular cap petitions prior to conducting the master's H-1B lottery. Any master's cap petitions not selected in the regular lottery will be eligible for selection in the master's H-1B lottery, effectively granting two opportunities at H-1B status.

U.S. Master's degree quota - degree requirements

If an applicant has a U.S. master's degree or PhD that he or she will use to apply for an H-1B cap case in the so-called "advanced degree" H cap lottery, the degree must comply with the below USCIS requirements, to ensure that the degree will qualify for inclusion in this lottery category. If the H-1B petition is selected in the lottery but the degree does not qualify, the case will be denied. Seyfarth Shaw assumes that any degree/diploma submitted by an applicant for purposes of filing an H-1B Master's cap petition does in fact qualify for the advanced degree lottery filing, meaning that it meets all of the following requirements. Please note in particular that degrees issued by for-profit institutions generally would NOT qualify.

To qualify for the Master's H-1B cap, the degree must be issued by an institution that:

- 1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who met the requirements of section 1091(d) of Title 20, United States Code, Section 1001(a);
- 2) is legally authorized within such State to provide a program of education beyond secondary education;
- 3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;
- 4) is a public or other nonprofit institution; and
- 5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association a reasonable time.

If you should have any questions about degree requirements for the U.S. Master's degree cap, please reach out to your immigration contact person at Seyfarth Shaw LLP. We will be happy to address your questions.