

2019 H-1B Cap Season: New Cap Lottery Selection Rule Favors Petitioners with Master's Degrees

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While employers and immigration attorneys are preparing for the H-1B Cap Season, [DHS has posted its Final Rule](#) for a More Effective and Efficient H-1B Visa Program. The new rule [will be published in the Federal Register on January 31, 2019](#).

As expected, the new rule provides for an electronic pre-registration requirement and reverses the order in which USCIS will select H-1B petitions during the Cap Lottery. The electronic pre-registration will be suspended until April 2020, but the change in the lottery selection process will go into effect on April 1, 2019.

Here is how the “reversed” selection process will work:

Instead of first conducting the U.S. master’s degree lottery and then adding any remaining U.S. master’s degree beneficiaries into the “regular” lottery, as in previous years, [DHS will](#):

- First, conduct the “regular” lottery for 65,000 visas with the master’s degree beneficiaries included,
- Then, put the remaining U.S. master’s degree beneficiaries into a lottery for the separate 20,000 U.S. master’s degree allocation.

USCIS expects this reversal will increase the number of U.S. advanced degree holders who will be selected by up to 16%, or 5,340 workers. This is being implemented to partially fulfill President Donald Trump’s policy as set forth in the “Buy American, Hire American” Executive Order. The [President directed DHS](#) to “suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or

highest-paid petition beneficiaries.”

While advantageous to foreign students with U.S. advanced degrees, this new process will make it more difficult for employers to hire those who hold foreign advanced degrees (some of whom may be the “most-skilled”) and for employers who are hiring individuals for positions that may require only a Bachelor’s degree.

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