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# Startups: A Founder's Playbook for the H-1B Cap Lottery

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## Agenda

- Lottery and Quota
- Process
- Updates to H1B Program
- Considerations for Startups
- Hot Topics
- What to Do Now
- Alternatives
- Q&A

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# H-1B Lottery / Quota

- What is it, and what does it mean?
  - 65,000 visas
- Separate quota for US-educated advanced degree holders
  - 20,000 visas
- Data from FY2026
  - ~ 336,153 distinct foreign nationals were registered in the lottery for FY2026
  - ~35% of unique beneficiaries were selected in the first lottery round
  - Single selection

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# Lottery Process

- Pre-registration process
  - Prevailing wage analysis
  - Review of eligibility, including status violation(s)
  - Creating MyUSCIS organizational account
- Registration process
  - Electronic submission
  - $215 fee for each beneficiary
  - March 2026
- Post-registration process
  - Notification of selection through account
  - Notification by March 31, 2026
  - File petitions only for selected beneficiaries
    - June 30, 2026, deadline

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# Updates to H-1B Program

- Updated lottery selection process
  - Beneficiary-centric (multiple submissions not considered)
  - Impact/Greater chance of selection (weighted selection process)
- Updated the definition of specialty occupation
- Existence of bona fide job offer
- Cap-Gap expansion
- Owner/founder H-1B eligibility

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# Considerations for Startups

- Must establish company with employer tax I.D. number
- Company can be 100% owned by H-1B employee (18-month initial approval)
  - Must be W-2 employee
  - Company separate entity from owner/employee
  - Independent Board of Directors or other mechanism

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## Considerations for Startups

*(cont'd)*

- Importance of business plan/financial projections
- Profitability/ability to pay
- Other employees helpful – not required

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## Considerations for Startups

*(cont'd)*

- Real job to be done by H-1B
- Prevailing Wage (Tech)
- Remote work considerations/home address
  - HQ needed?

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# Hot Topics

- Weighted lottery system - wage level
  - Level I: 15.29%
  - Level II: 30.58%
  - Level III: 45.87%
  - Level IV: 61.26%

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# Hot Topics

- $100,000 fee rule
- Adjudication policies for "high risk" countries
- Visa stamping enhanced vetting
- Compliance

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# What You Need to Do Now

- Create MyUSCIS organizational account
- Registration with Department of Labor for LCA
- Preparing for issues before registration
  - Occupational classification
  - Prevailing Wage
  - Status maintenance until October 1
    - Cap-gap rule – April 1

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# H-1B Alternatives

- Continue F-1 work authorization (CPT, OPT, STEM-OPT)
- O-1 extraordinary ability
- H-3 training / J-1 research scholar
- Employment abroad and L-1 eligibility
- E-1/E-2 treaty traders/investors
- Concurrent H-1B with cap-exempt entity
- Country specific alternatives

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# Questions?

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*Register for our webinar next week!*

## H-1B FY2027: Planning with Purpose in an Evolving Program

Thursday, February 12
12:00pm
*SHRM Credit offered*

Speakers:

- Michele Madera
- Carolina Regales
- Candace Hill

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# For Further Information

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**SCHEDULE A CONSULTATION:**

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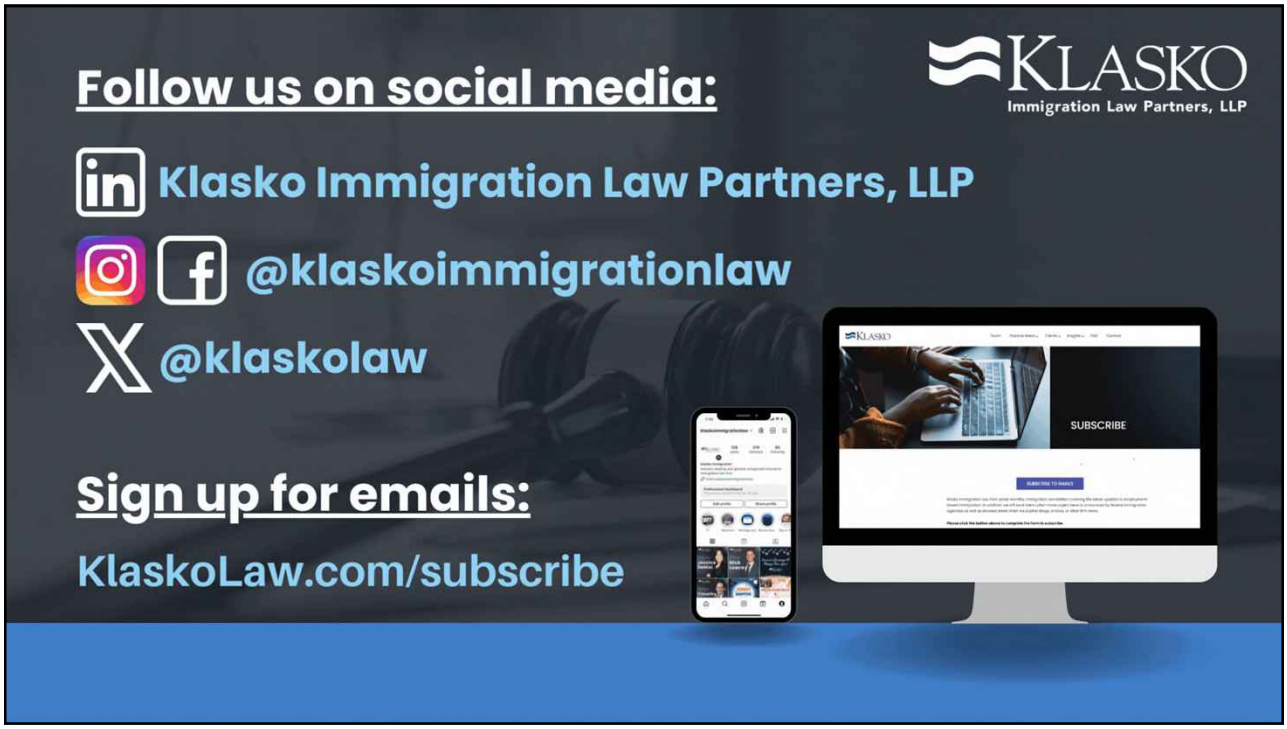
**REQUEST: Karuna, Elise, Anabel, Nigel**

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