

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

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## H-1B Specialty Occupations Visas

- A specialty occupation is that which requires
  - theoretical & practical application of a body of highly specialized knowledge to fully perform the occupation &
  - the attainment of a bachelor's or higher degree in a directly related specific specialty, or its equivalent, as a minimum for entry into the occupation in the US.
- For initial H-1Bs, the H-1B may be subject to the fiscal cap of 85,000 available H-1B visas, or be considered cap-exempt.
- The Petitioner must agree to pay at least the DOL prevailing wage for the offered position to the foreign national employee.

## The H-1B Cap Lottery Process

- Identify beneficiaries early
- Pre-registration process
  - Review of wage level for Weighted Selection
  - Master's or regular cap
  - Electronic submission
  - \$215 fee for each beneficiary
  - 2026 Registration Period: March 4-19
- Post-registration process
  - Notification of selection through account
  - File petitions only for selected beneficiaries



## New Weighted Selection Process for FY 2027 H-1B CAP

- Beneficiaries are assigned a wage level based on salary.
- Wage level determined by comparison to DOL wage data for relevant occupation and worksite.
- Higher wage level beneficiaries will be entered into lottery pool multiple times, and will receive exponentially better selection odds
- Estimated selection rates under new weighted system (USCIS historical data):
  - Wage Level IV:** ~61% probability
  - Wage Level III:** ~46% probability
  - Wage Level II:** ~31% probability
  - Wage Level I:** ~15% probability



## What You Need to Do Now

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- Register or update company's account
- Registration with Department of Labor for LCA
- Preparing for issues before registration
  - Occupational classification
  - Determine weighted wage level
  - Determine LCA Prevailing wage
  - U.S. Master's or regular cap

## Anticipating Issues for 2026 Filings

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- Specialty occupation selections may have higher scrutiny from USCIS
- Differences between weighted wage levels and LCA wage levels.
- Material job condition changes after initial H-1B filing.
- Offsite work, travel, and itineraries
- Prior periods of CPT, OPT and maintenance of status

## Identifying 2026 Cap Cases

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- Need to identify/prepare cases early
- OPT
- L-1A and L-1B
- TN
- Overseas employees – Impact of Proclamation (\$100K Fee)
- H-4/L-2 EAD
- DACA/TPS/Other

## Strategic Advice

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- Requesting more information at outset
- \$100K Proclamation Fee
- Anticipating RFEs
- Set expectations with managers
  - Timing
  - RFEs
- Consider backup plans
- No benefits with multiple registrations – this will result in USCIS using lowest wage level.

## Cap Gap & Beneficiary Ownership

- Extend cap gap from September 30th to April 1st
  - Non frivolous change of status petition
  - Helps to eliminate gaps in F-1 employment authorization due to long processing times, RFEs, etc.
- H-1B for entrepreneurs
- A beneficiary with controlling interest may be eligible for H-1B
  - Controlling interest = more than 50%
  - Must perform specialty occupation duties a majority of the time
  - 18-month initial approval



- Continue F-1 work authorization (CPT, STEM, OPT)
- H-3 training for non-STEM fields
- Employment abroad and L-1 eligibility
- Consider spousal status
- O-1 or EB-1 / NIW
- Labor certification / direct to green card
- Consider another status individuals may be eligible for: E-2, E-3, TN, H-1B1

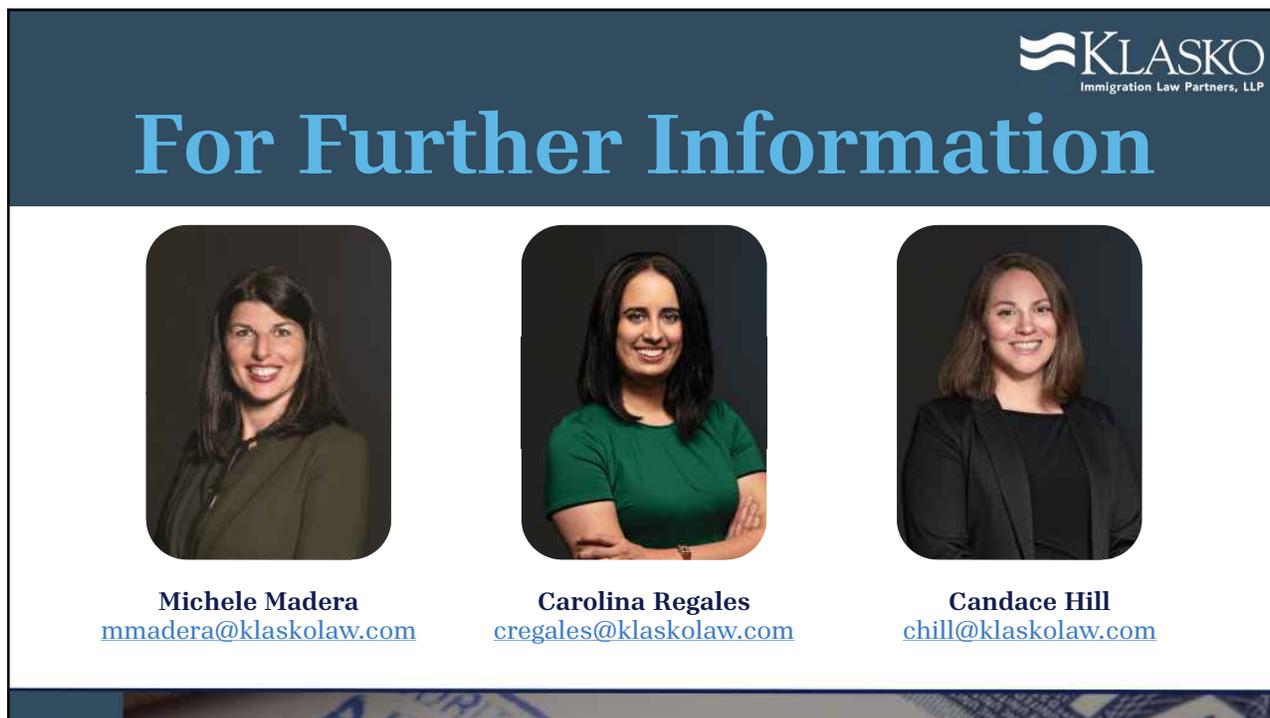


## H-1B Alternatives



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# Questions?



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## For Further Information



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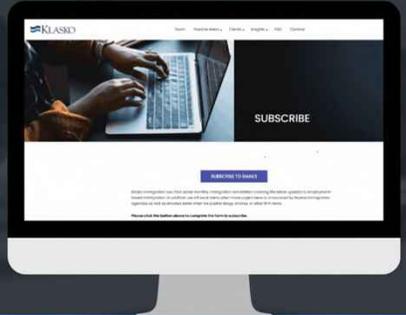
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