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Talent Without Borders: Immigration Insights - August- September 2023

Insight — August 16, 2023

- **Second Round of H-1B Cap Registration Selection** – United States Citizenship and Immigration Services (USCIS) conducted a second round of the H-1B cap lottery between July 28th and 31st for Fiscal Year (FY) 2024. The new selections were welcomed by employers and employees alike following extremely low selection rates in the initial round of the lottery, with USCIS reporting 780,884 registrations received for 85,000 available slots. The new selections were drawn from the existing pool of H-1B registrations submitted in March 2023 and did not require any additional action from employers. H-1B petitions for registrations selected in the second round must be filed between August 2, 2023 and October 31, 2023.
- **Updated STEM Designated Degree Program List** – On July 12, 2023, the Department of Homeland Security updated the STEM Designated Degree Program List with 8 new degree fields:
 - Landscape Architecture
 - Institutional Research
 - Mechatronics, Robotics and Automation Engineering Technology/Technician
 - Composite Materials Technology/Technician
 - Linguistics and Computer Science
 - Development and Adolescent Psychology
 - Geospatial Intelligence
 - Demography and Population Studies

All previously approved STEM fields remain unchanged and the new list with the addition of the above fields of study became effective immediately. This is significant for employers because foreign national students graduating from programs in the above fields will now be eligible for a two-year STEM extension of their Optional Practical Training (OPT) for a maximum of three years of employment authorized status post-graduation.

- **Expiration of Automatic EAD Renewals for up to 540 Days** – USCIS' temporary rule allowing automatic extensions of employment authorization for certain categories up to 540 days is

expiring on October 26, 2023. Categories of note to employers include (c)(9) Pending I-485 adjustment of status, (c)(26) H-4 spouses of certain H-1B nonimmigrants, and (a)(18) L-2 spouses of L-1 nonimmigrants. After October 26, 2023, applications for work authorization renewal via Form I-765, Application for Employment Authorization will be eligible for an automatic extension of up to 180 days, rather than the 540 days allowed by the temporary rule.

- **September 2023 Visa Bulletin Released** – The Department of State (DOS) recently released the September 2023 Visa Bulletin with a few changes from the August 2023 report. Notably, EB-1 India and China remain retrogressed. EB-1 India will remain retrogressed by over ten years due to reaching its Fiscal Year (FY) 2023 limit and no additional visas can be issued in that category until the new fiscal year begins on October 1, 2023. DOS also noted that it anticipates reaching more employment-based preference category limits and/or the overall employment-based preference limit for FY 2023 during September. When the annual limit is reached, the preference categories will be made unavailable and no further requests for visa numbers will be honored for the remainder of FY 2023.
- **Canadian Professional Work Permit Program Reaches 10,000 Limit within 2 days** – On July 16, 2023, H-1B specialty occupation workers in the United States were eligible to apply for open work permits in Canada for up to three years. Approval for this Canadian work permit would allow foreign workers to seek employment with any employer in Canada, unlike the employer-specific H-1B program in the U.S. All 10,000 available slots were filled within two days of the program opening, signaling great interest from foreign national workers in the U.S. It is unclear at this time if Canada will extend this program beyond this year, but U.S. employers should be aware that foreign workers are actively seeking alternative, less restrictive immigration options due to increasingly low selection rates in the H-1B cap lottery.

Emma Fahey assisted in writing this article. Emma is an Immigration Project Assistant at Holland & Hart and is not an attorney.

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