

Fears of greater USCIS scrutiny behind filing of lower number of H-1B petitions and second lottery

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The US Citizenship and Immigration Service announced on Thursday that it will conduct a second lottery or random selection from previously submitted registrations for the financial year 2024 for the annual cap of 85,000 H-1B work permit visas.

This announcement holds out hope for thousands of Indians, who form the largest number of H-1B recipients every year; and many of whom had faced disappointment in the first lottery held in March this year.

The second lottery announcement by the USCIS is not a surprise for most experts and immigration lawyers who were expecting it because they felt that many of those selected in the first lottery had not filed their H-1B petitions during the initial registration window of April 1 to June 30.

“Not all the cases selected in the first round of lottery culminated in an H-1B petition filing. We now know that a substantial number of the H-1B registrations were ‘duplicate’ filings for the same individual through multiple petitioners. Many of them ultimately did not go forward with filing H-1B petitions due to the US Department of Homeland Security’s announcements that they would investigate duplicate filings. As a result, USCIS ended up with far less H-1B filings than they anticipated,” Diya A. Mathews, partner and attorney at law firm Chugh, LLP, told the Times of India.

She added that the announcement brings a glimmer of hope to the many disappointed applicants who were not selected in the first round and even though USCIS has not announced how many more selections they will make, it’s likely that quite a few numbers will open up.

This is not the first time, however, that two lotteries are being held for the annual cap-subject H-1B work permits in the same financial year. During the Covid-19 pandemic, there were three rounds of H-1B lottery in fiscal year 2021.

The difference this time though is that the duplicate registrations submitted to unfairly increase chances of selection are the reason for the announcement of another lottery by the USCIS. In fact, many feel that there could be a third lottery, too, for this financial year.

While the announcement by the USCIS this May, flagging concerns over a large number of multiple registrations by the same candidates and many of them trying to gain unfair advantage in the H-1B lottery process by working together with unscrupulous companies and consultancies is the reason behind many not filing their petitions; genuine applicants are welcoming the second chance to be selected and receive an H-1B visa this year.

“Our experience was that only about 15% of applicants were selected initially leaving thousands with no hope for a work permit until October 2024 at the earliest. Now there is new hope that some additional applicants can receive work authorization in 2023,” Emily Neumann, attorney at law, Reddy & Neumann, an US business immigration law firm in Houston, Texas, said. Fears of potential criminal proceedings, against those who unfairly gamed the system, is the reason behind many employers not filing the petition of many despite their being selected, she felt.

While most immigration lawyers felt that it was evident that USCIS would not receive enough filings to meet the H-1B cap and second round was expected; details about the next lottery are still unclear. “We are following this announcement closely and awaiting details on how many H-1B filings were received by the USCIS in the first round and how many registrations will be selected in the second round as well as the dates for the second filing window,” Manjunath Gokare, an immigration lawyer based in Atlanta, Georgia.

Anirudh Singh (name changed), who was not lucky in the first H-1B lottery in March feels that the announcement by the USCIS comes as a small ray of hope.

“But if USCIS is going to pick from the remaining lot, it means the fake entries are still there. It would have been better if they had weeded out illegal entries to do a fair lottery,” said Singh who is working at a technology company in Texas on an optional practical training student visa. He will have to leave the US if he is not lucky in the H-1B lottery.