

Briefing

March 2023

Canada

H-1B lottery results and considerations for working in Canada

Summary

In our immigration alert on 28 March 2023, we wrote that the [H-1B registration process](#) (also known as the H-1B lottery) was completed by the United States Citizenship and Immigration Services (USCIS). In any given fiscal year, USCIS makes available a limited number of H-1B work authorized visas. The allotment of H-1B visas has, every year in the last decade, been remarkably oversubscribed. In previous years, there has been approximately one selected H-1B registration for every three applied for. This year, anecdotally, there are reports that many organizations have only been able to obtain as little as 10% to 20% of their H-1B registrations submitted as part of the lottery process.

The result is painful not only for beneficiaries of H-1B visas, but also to the U.S. organizations that require their services in order to compete both domestically and internationally. There is no doubt that the global war for talent has heated up.

With the H-1B lottery becoming increasingly competitive, employers have begun looking for alternative options to secure foreign talent to their companies.

We have assisted employers and their employees who have been unable to obtain work authorization in the United States, and this immigration brief offers an alternative for organizations who have operations in Canada or are considering opening operations in Canada.

Key Developments

For employers with a talent crunch, Canada's immigration system offers an alternative to the numerical limitations of H-1B visa program. There are no numerical limits on the number of work visas issued, and the country has a number of different visa processing categories that allow employers to hire foreign workers. These programs include both temporary work permit and permanent residence options. To this end, Canada offers several work permit options for skilled foreign workers. These include the following:

- ▶ Temporary Foreign Worker Program (TFWP) which allows Canadian employers to hire foreign workers to temporarily fill labour shortages. The Global Talent Stream, which is part of the TFWP, provides expedited work permit processing for highly-skilled workers in certain technology-related jobs
- ▶ International Mobility Program (IMP) allows foreign workers to work in Canada on a temporary basis without a Labour Market Impact Assessment (LMIA), which is a process to test the Canadian labour market. The IMP includes several categories, such as intra-company transferees, professionals under international trade agreements, and significant benefit to Canada

With the government of Canada's recent announcement that it is targeting to attract 1.5 million new immigrants to the country over the next three years, Canada is actively encouraging and facilitating skilled workers to apply for Canadian permanent residence.



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Canada's welcoming of new immigrants is facilitated through several economic permanent residence immigration programs that are specifically designed to attract skilled workers, including the Federal Skilled Worker Program (FSWP) and the Canadian Experience Class (CEC).

These programs evaluate applicants based on their education, work experience, English/French language proficiency, and other factors to determine eligibility for immigration to Canada. One significant benefit to Canada's approach is the Express Entry system, which provides a fast and efficient way for skilled workers to apply for permanent residency. The Express Entry system ranks applicants based on a points system, and those with the highest scores can be invited to apply for permanent residency.

Canada also offers several provincial nomination programs (PNPs), which is another pathway that allows skilled workers to apply for permanent residency when they meet certain criteria established by each province or territory to address their specific labour market needs.

What this means

In an age of increasing competition for talent, and in a post-pandemic period where remote work is becoming more common, Canada's immigration system may help your organization with its staffing needs. When looking at your business' talent needs, consider that Canada offers a range of immigration programs that provide opportunities for skilled workers who have not been selected in the H-1B lottery. Canada's proximity to the United States and similar business cultures can prove to be positive when looking to retain foreign talent.

Additionally, for employees working in Canada for at least a year in a related business entity in the country, such persons may be able to return to the U.S. using the L-1 intracompany visa.

By exploring these options, employers can potentially address their labor shortages and pursue cross-border business growth opportunities while providing their employees with valuable work experience in Canada.

Should you have any questions with respect to this strategy, please do not hesitate to contact your EY Law LLP professional.

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