



**THE EMPLOYER'S
GUIDE TO
H-1B CAP SEASON**

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Introduction from Ian M. Love



Ian is a Partner at Corporate Immigration Partners, P.C., focusing on immigrant and nonimmigrant matters for companies ranging from startups to Fortune 500 firms.

The H-1B is one of the most sought-after employment-based visas. However, with a cap of 85,000 visas annually, it's important for human resources professionals and hiring managers to understand the H-1B process and plan accordingly at their organizations.

Planning is especially important now because, in recent years, we've seen considerable changes to the H-1B process, from selecting petitions in the regular cap first, to the introduction of electronic registration. Working with legal counsel ahead of time to develop a plan and determine next steps for both the company and the foreign nationals who will be entering the lottery helps ensure a seamless experience throughout the petition process.

Always consult with legal counsel for more detailed information and help with any questions that come up along the way.

Ian M. Love

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Who's Eligible?

The H-1B visa is designated for individuals working in a specialty occupation, which is defined as a position requiring at least a bachelor's degree in a specific field related to the job (or its equivalent) and the foreign national being sponsored has at least a bachelor's degree in that specific field (or its equivalent).

New H-1B cap cases are generally for recent graduates of U.S. institutions. For human resources teams, it is important to communicate with the company's foreign national population to see who needs support throughout the H-1B process.

Employers look to hire professional foreign nationals on an H-1B because oftentimes, they're seeking to fill roles that require knowledge in STEM-related fields, although this isn't always the case. According to [USCIS data](#), 66.0% of all H-1Bs issued in Fiscal Year 2022 with known occupation data were for "computer-related occupations."

There are 85,000 new cap-subject H-1B visas available each year, and that number is broken down into two groups: the regular cap and the master's cap. There are 65,000 visas set aside for the regular cap, and the remaining 20,000 visas are reserved for individuals with a master's degree or higher from a U.S. institution.

The master's or advanced degree cap is meant for individuals with a qualifying U.S. master's degree or higher. The regular cap is meant for a U.S. or foreign bachelor's degree or foreign master's degree or higher.

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H-1B CAP

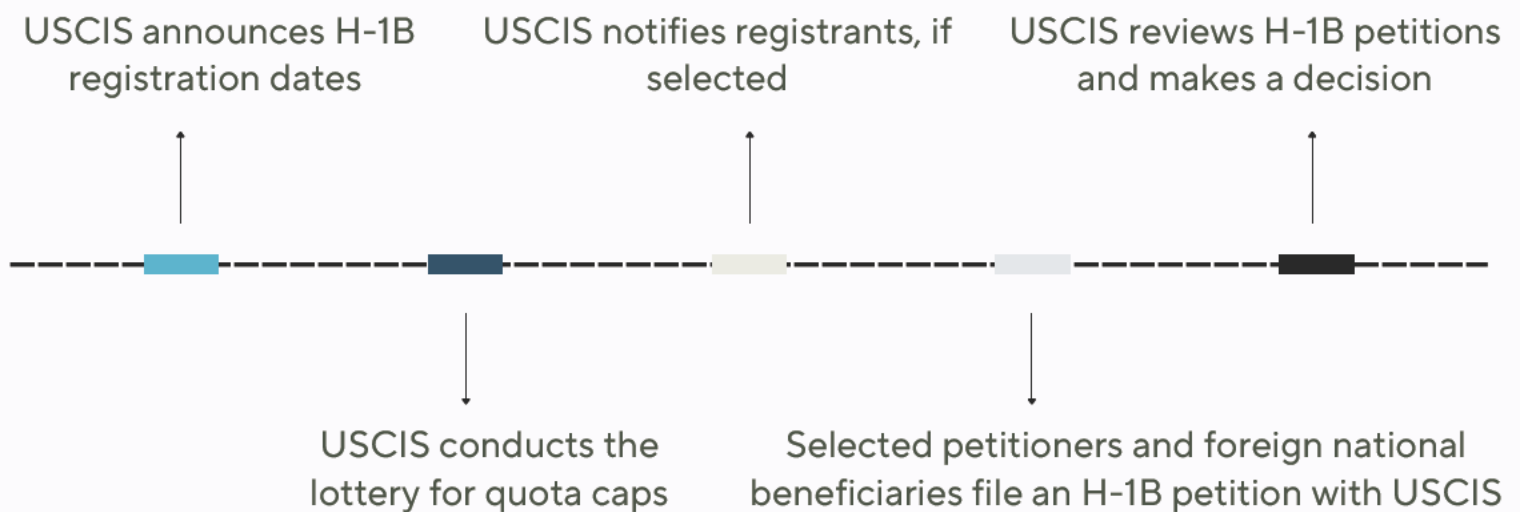
First-time H-1B visa beneficiaries are subject to the **H-1B lottery**. The number of visas processed each year is:

- **65,000** for bachelor's degrees and an additional
- **20,000** for applicants with master's degrees.

If the H-1B petition is accepted for processing and approved, the earliest possible official start date is October 1.

Note: H-1B petitioners employed at an institution of higher education or at certain nonprofit entities are not subject to the cap.

THE H-1B LOTTERY OVERVIEW



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THE LATEST H-1B CHANGES

The Department of Homeland Security has finalized the H-1B modernization rule, which took effect on Jan. 17, 2025. This significant update aims to enhance the H-1B visa program and includes several key changes:

- **Revised Definition of Specialty Occupation:** The criteria for a specialty occupation have been clarified. Employers can now accept a broader range of qualifying degree fields, provided a direct relationship exists between the degree and the job duties.
- **Enhanced Cap-Gap Protections:** The rule extends the cap-gap protections for F-1 students transitioning to H-1B status. This change allows students to maintain their status and employment authorization until April 1 of the relevant fiscal year, significantly increasing the time allowed compared to previous rules.
- **Elimination of Detailed Itinerary Requirement:** Employers' requirement to provide a detailed itinerary of specific day-to-day assignments for the H-1B petition has been removed, simplifying the application process.
- **Deference Policy Codification:** The rule codifies USCIS's longstanding policy of deference to prior approvals. This means that if a petition is similar to one previously approved, it will generally be granted unless new material information is presented.
- **Self-Petitioning for Beneficiary-Owners:** Certain owners of H-1B petitioning entities can self-sponsor under specific conditions. However, USCIS will limit the validity of initial petitions and first extensions to 18 months each.
- **Site Visit Authority Strengthened:** USCIS has enhanced its authority to conduct site visits to ensure compliance with program requirements.
- **New Form I-129 Requirement:** A new version of Form I-129 will be mandatory starting Jan. 17, 2025, with no grace period for using prior editions.

These changes reflect a dual focus on modernizing the program. They also provide greater flexibility and protection for workers. Ultimately, these changes aim to improve the efficiency and integrity of the H-1B visa system.

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THE LATEST H-1B CHANGES

In February 2024, USCIS published key improvements to the selection process. Specifically, the program changes reduce the potential for fraud in the registration system and give all beneficiaries equal potential for being selected, regardless of the number of registrations submitted on their behalf. Now, registrations will be chosen based on the unique beneficiary instead of registration, giving all beneficiaries an equal chance of being selected regardless of the number of registrations employers submit on their behalf.

In addition, USCIS will require registrants to provide either a valid passport or travel document. The passport or travel document provided must be the same documentation that the beneficiary plans to use for entering the U.S. Each beneficiary must be registered only under one passport or travel document.

The final rule also clarifies requirements regarding requested employment start dates on certain cap-subject petitions. The final rule allows for petitions to be filed with a requested start date after October 1 of the relevant fiscal year in certain circumstances.

Lastly, the H-1B final rule allows USCIS to deny or revoke H-1B petitions if the registration contained a false attestation or was otherwise invalid. USCIS can also deny or revoke an approval if it determines that the registration fee submitted is declined, disputed or invalid after submission.

As of January 17, 2025, USCIS will only accept Form I-129 with the January 17, 2025 edition date.

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New or increased fees effective April 1, 2024:

- I-129 H-1B: increased from \$460 to \$780
- H-1B registration: increased from \$10 to \$215

USCIS will give its adjudicators more time to provide [Premium Processing](#) service by changing its required response period from a count of calendar days to a count of business days. USCIS believes this change will allow the agency adequate time to adjudicate petitions and provide petitioners with a consistent and predictable service.

TYPE OF FILING	PRE-APRIL 1ST FEE(S)	PROPOSED FEE	FINAL FEE(S) APRIL 1ST	FEE INCREASE	% INCREASE
H-1B, H-1B1	\$460	\$780	\$780	\$320	70%
H-1B, H-1B1 (SMALL EMPLOYERS AND NONPROFITS)	\$460	\$780	\$460	\$0	0%

*For a complete overview of filing fees, visit envoyglobal.com

WHAT IS H-1B ELECTRONIC REGISTRATION?

The H-1B lottery selection process begins with an online electronic registration of qualified H-1B beneficiaries. Employers or their designated attorneys input information about their company and each potential lottery recipient. Each H-1B beneficiary's information is entered into the online system and a nonrefundable \$215 fee is required for each lottery registrant.

While the registration process is relatively straightforward, it requires a coordinated effort between an organization's immigration counsel and their immigration program manager.

USCIS then conducts the random H-1B lottery by selecting from the completed online registrations. USCIS will first select registrations for the H-1B regular cap and then select registrations toward the master's or advanced degree cap.

USCIS will then electronically notify petitioners, the designated company representative and the immigration provider of selections. Selections typically occur prior to April 1, and selected registrations must submit completed H-1B petitions within 90 days of lottery selection.

It is important to note that lottery selection does not guarantee approval of the H-1B petition, and all petitioners and their employees must demonstrate all mandatory qualifications, such as degree and salary, to be eligible for the H-1B visa. The Labor Condition Application (LCA) is needed as a supplemental document.


According to USCIS, the H-1B cap will use the beneficiary-centric selection process launched in FY 2025.


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INITIAL STAY

3

years



 **H-1B Renewal**

After the initial period of stay, employers may file a renewal or extension for the H-1B employee. This should extend the stay by up to three more years. H-1B visa holders may stay in the U.S. for six years in H-1B nonimmigrant status.

H-1B holders who have reached certain milestones in the green card process may be able to extend their status beyond the six-year max-out date.

H-1B Requirements

Examples of Specialty Occupations:

- Biotechnology
- Education
- Engineering
- Computer Sciences
- Management
- Medicine
- Many more

The position must require at least a bachelor’s degree in a specific or related field (or its equivalent).

In addition, individuals must have completed a bachelor’s degree or its equivalent in a field of study related to the position. If the individual obtained the degree overseas, or it is not a four-year bachelor’s degree, an education evaluation must be completed to verify that through education or experience, the individual has the equivalent of a bachelor’s degree.

Additionally, the employer must pay a wage that equals or exceeds both the prevailing wage and actual wage for the occupation in the location(s) where the beneficiary will work.

H-1B Petition and Filing Fees

- **Petition filing fees** changed on April 1, 2024.
- **Premium Processing:** Employers can choose to pay the premium processing fee when available and USCIS will adjudicate the H-1B petition, meaning they are required to approve, issue a Request for Evidence or deny the visa within 15 business days.

*Note: Beginning April 1, 2024 USCIS will give adjudicators more time to provide Premium Processing service by changing its required response period from a count of calendar days to a count of business days.

H-4 Dependents

H-4 spouses can obtain employment authorization if their spouse in H-1B status has reached certain milestones in the green card sponsorship process. USCIS first started issuing employment authorization to [H-4 visa holders in 2015](#).

A Labor Condition Application (LCA), the ETA Form 9035, is submitted to the Department of Labor (DOL) and establishes that an employer is paying at least the prevailing wage or the actual wage to its foreign national employee in a given geographical area. The LCA also ensures fair working conditions and an approved LCA is required for the H-1B.

This means that once the electronic registration is selected, employers or their designated representative will have to file an LCA and receive a certification from the DOL before moving forward with the petition process. Standard processing time is seven to 10 days, but processing may take longer during cap season.

Additionally, entities that have never filed an LCA must first be registered with the DOL. This step can add even more time to the process. Keep in mind that this can be done pre-electronic registration.

The LCA is a major compliance piece for employers. It's one piece of the H-1B and also one piece of the Public Access File. As such, it is essential to comply with the conditions certified in the LCA throughout the duration of the H-1B visa petition process, or there may be penalties.

These conditions include:



Every LCA filed is available for the public to search via the U.S. Department of Labor's FLAG system.

'PERFECTING' THE PETITION

Remember from earlier only petitioners who have an electronic registration selected can submit the full H-1B petition.

If selected, collect the appropriate employer and employee documents. The Checklist section of this guide has a detailed breakdown of which documents to collect.

Practice Pointers: Job Descriptions

Maximize the chance of success in the H-1B lottery by providing detailed job descriptions.

Provide specific, detailed job duties that describe the worker's day-to-day activities.

Descriptions should also emphasize advanced concepts and knowledge. Make it clear that the position requires a specific degree. Broad categories such as "Engineering" or "Business Administration" often trigger a request for evidence (RFE).

Let's look at a few examples:

Develop high-quality software for our business → Too vague.



Practice pointer: Utilize technologies including Java, Ruby and Python. Develop software to automate the Company's shipment tracking platform.

Communicate with other teams about business requirements → Too vague.



Practice pointer: Collaborate with internal departments, including HR, Fulfillment and Accounting to identify software needs for shipment tracking platform.

Submitting the Petition

USCIS adjudicates H-1B petitions on a first come, first served basis once the cap opens.

USCIS will take some time to review cap-subject petitions. Lottery selection is completely random; there is no way to increase the odds of being accepted. However, this step is unlikely to change.

USCIS will review the cap-subject petition and send out a receipt number. Before a petition is approved, USCIS can submit a request for evidence, which we will discuss in more detail in the following section.

Requests for evidence (RFEs) are notices sent by USCIS, informing petitioners that, per USCIS, the petition needs to provide further information or that they need more clarification in the petition to make a determination.

Employers must work with their legal counsel to send the requested information to USCIS before their petition can be approved. Failure to do so may result in a denial.

Common RFEs

According to USCIS, four of the most common reasons for RFEs in FY 2018 were:

- Specialty Occupation
- Employer-Employee Relationship
- Evidence of the Beneficiary's Qualifications
- Maintenance of Status

Impacts of RFEs

There are many impacts of receiving RFEs on a petition. First, expect longer processing times. USCIS typically issues a response to an RFE within 60 days, though this is not a regulatory requirement. In some cases, responses can take longer than 60 days.

Also, prepare for higher costs as additional work must be completed with the petition.

Finally, employers should [anticipate increased uncertainty and apprehension](#) about filings among foreign national employees.

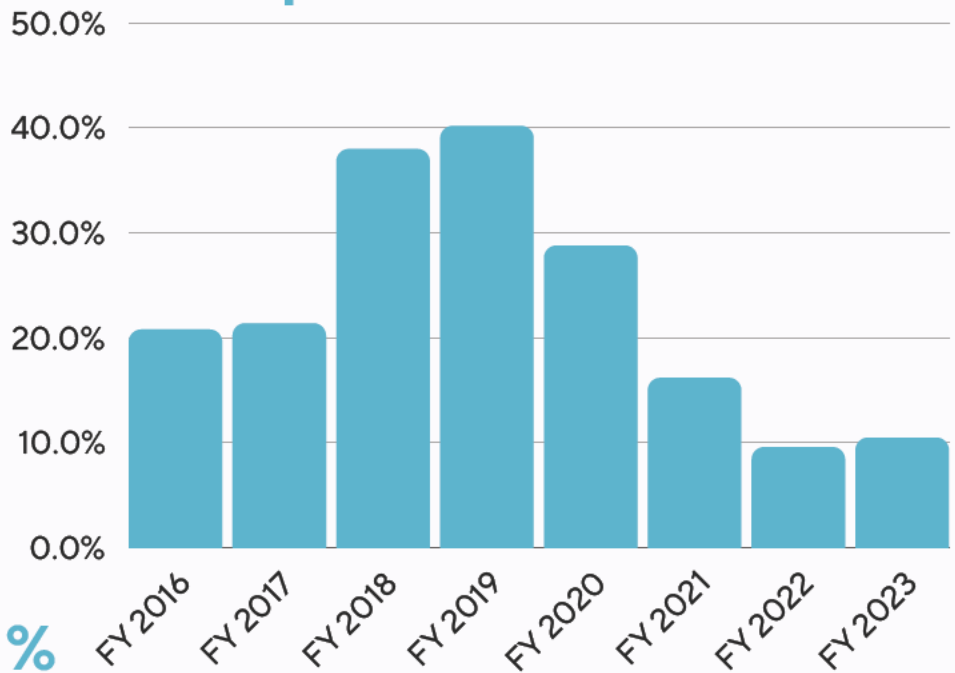
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WHAT IS A REQUEST FOR EVIDENCE?

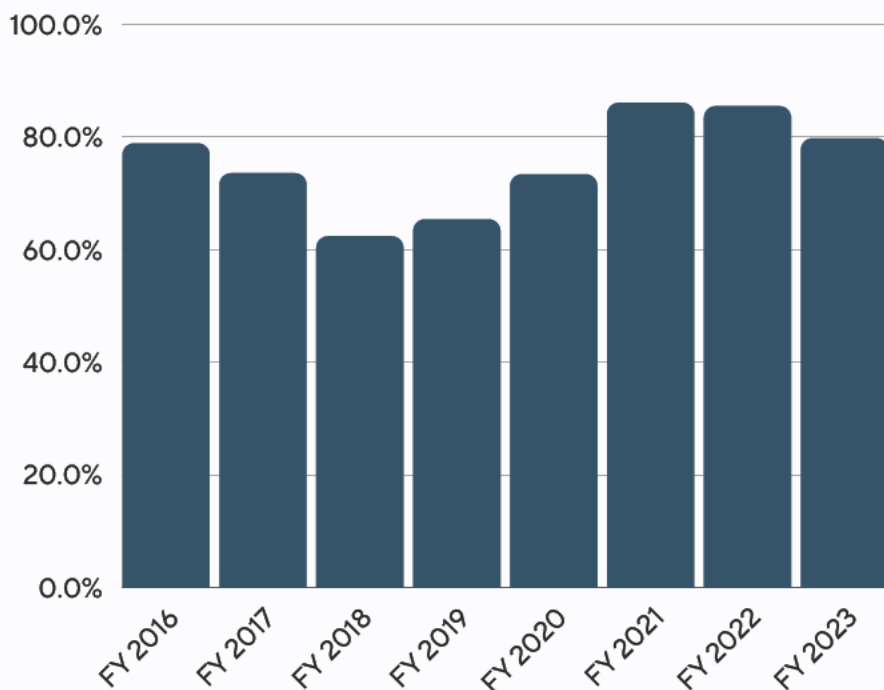
Let's look at the numbers to see how often USCIS issues RFEs.

This graph shows the percentage of petitions submitted and completed that receive an RFE. According to USCIS data, 10.5% of petitions received an RFE in FY 2023.

Completions with RFE %



Approved with RFE %



Once a petition receives an RFE and is re-submitted, USCIS approves it 79.8% of the time, according to FY 2023 data.

CONCLUSION

We hope you have found this guide informative and applicable to your role. The following sections include additional resources, such as an H-1B checklist and glossary of important terms.

Working with Envoy Global and Corporate Immigration Partners, P.C. during the H-1B cap season ensures a streamlined and more efficient solution for navigating the H-1B cap season. Our dedicated services team offers personalized case management assistance for employers and their employees throughout the entire process, while our industry-leading immigration technology platform provides real-time insights, secure documentation collection and ease of communication throughout the application process.

CIP PC is a premier law firm dedicated to excellence, innovation, integrity, and compassion in employment-based immigration. CIP PC stands out as an innovator in the field of business immigration law, partnering with employers who share their values to bring them and their employees the best immigration experience. Based on CIP PC's extensive experience across diverse industries, they ensure that clients receive the highest level of legal expertise.

Let us help you navigate this H-1B cap season and all your immigration and mobility needs. Click [here](#) to learn more.

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An important step toward ‘perfecting’ the H-1B cap petition is to ensure you collect the necessary documentation. The following are examples of relevant supporting documentation.

Employer Documentation

- Corporate website content
- Catalogs
- Brochures
- Job description
- Terms of employment
- Offer of employment
- While not mandatory, financial documents help USCIS verify the legitimacy of your company
- Tax returns or an annual report
- Local business registration
- Business plan
- Client list

Employee Documentation

- Documentation of the employee’s current immigration status, if in the U.S.
- College diploma
- Transcripts
- Passport biographical page
- Resume or any curriculum vitae
- Education evaluation → If the employee’s degree was completed outside the U.S., an education evaluation is usually recommended to confirm the U.S. equivalency of the employee’s education.

H-1B →

- ▶ Commonly used work visa that allows foreign nationals in specialty occupations to seek temporary employment in the U.S.

U.S. Citizenship and Immigration Services (USCIS) →

- ▶ A federal agency that oversees lawful immigration to the United States by issuing employment authorization documentation, maintaining Form I-9 and administering the E-Verify employment eligibility verification program. This agency will adjudicate most work authorization petitions.

U.S. Department of Labor (DOL) →

- ▶ A government agency that fosters and promotes the welfare of workers, job seekers and retirees by improving and maintaining working conditions and benefits. The DOL also regulates the LCA and PERM process in the interest of protecting the U.S. labor market.

Approval Notice →

- ▶ A notice mailed to the employer or an attorney establishing that an FN has been approved for the applicable employment authorization, work visa or green card.

Employment Eligibility Verification →

- ▶ Also known as Form I-9. A document created by DHS and USCIS to verify the identity and legal work authorization status of an employer's candidate.

Labor Condition Application (LCA) or ETA Form 9035 →

- ▶ An application submitted to the DOL that establishes an employer is paying at least the prevailing wage to its FN worker in a given geographical area. An approved LCA is required for the H-1B, H-1B1 and E-3 visas.

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Applicant

Foreign nationals applying for a visa for their own benefit.

Cap

A limit on the number of visa applications processed for a particular category. A cap applies to H-1B visas, which limits the number of new applications processed annually to 85,000.

Cap-Gap Extension

An F-1 OPT status extension granted to student visa holders waiting for their H-1B transfer of status to begin. Due to the H-1B cap season, a status gap occurs when the student's F-1 OPT status ends on or after April 1st and the H-1B start date has yet to take effect.

Change of Status

A request filed with USCIS stating an individual would like to officially change the purpose of his or her visit to the United States. For example, foreign students on F-1 visas often transfer to H-1B statuses to gain work authorization.

Dependent Visa

A special visa classification offered to spouses and unmarried children 21 years old and younger to allow them to travel and stay in the United States with a work visa holder, such as the H-1B and its H-4 dependent status.

E-Verify

A Web-based system that compares information from an employee's Form I-9 to data from DHS and Social Security Administration records to confirm employment authorization.

Extension of Status

The act of renewing non-immigrant status to extend the length of stay in the current status. For example, H-1B visas can be renewed for up to three years at a time.

Processing Time

The time it takes a visa or green card to complete processing. Once accepted for processing, a work visa may take months; however, green cards can span years due to backlogs.

Foreign National (FN)

A person who is not a citizen of the host country in which they are temporarily residing. All nonimmigrant visa holders, such as L-1A or TN recipients, are FNs.

Government Fees Costs

Associated with the visa applications that are paid to government agencies such as USCIS or the DOS.

Immigrant Status

A term used for individuals living in the United States permanently. The majority of work visa holders have nonimmigrant status, denoting the temporary nature of their stay in the United States, while green card holders have immigrant status.

Nonimmigrant

An FN who is admitted to the United States for a specific, temporary period of time. Nonimmigrant visa categories include: H, L, O, P, J, F and TN.

Petition

A petition establishes that an employer wishes to sponsor a FN for an H-1B temporary work visa.

Petitioner

In the H-1B context, refers to the employer sponsoring a foreign national for work authorization.

Premium Processing

This is an expedited adjudication process for an additional fee requiring USCIS to take action within 15 calendar days of receiving a petition for certain visas or certain parts of the green card application process.

Prevailing Wage

The hourly wage or salary paid to the majority of workers within a particular area. This is used during the green card application's PERM requirement or in other non-immigrant work authorization categories to establish a fair working wage for the position offered, within the worksite location and for in a given industry.



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