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## April 2023 - T&R Newsletter

Welcome to T&R's monthly newsletter and happy spring! In this month's newsletter we provide updates on the H-1B cap selection and options if not selected; the May 2023 visa bulletin; and ways for green card holders to get extensions of their cards. Please connect with us on social media (LinkedIn, Facebook and Twitter) if you want to get more updates!

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### H-1B CAP SELECTION!

The USCIS announced that they had received sufficient registrations to reach the Fiscal Year 2024 H-B cap limit on March 27<sup>th</sup> after accepting registrations between March 1 – March 20, 2023. The selection rate was unusually low with our firm at 19% of all H-1B petitions filed. This may have been higher than other firms who have reported lower rates of between 10 – 17%. The USCIS has not yet announced how many registrations were received, but it is estimated that it could be 500,000 or more.

**Options if not selected:** For those not selected in the H-1B cap, you should consult with your immigration attorneys to determine what options you may have. Here are some options to consider:

- **F-1 student:** Enroll in a new F-1 program for an advanced degree if you have F-1 OPT after a bachelor's degree. Having a U.S. Master's degree can improve your chances in future H-1B cap selections.
- **O-1 visa status:** Person of extraordinary ability in their field, with somewhat more lenient standards for "early STEM careers" if you have a master's degree or higher in a STEM field.
- **Day 1 CPT:** Enroll in a Master's course at a university that will approve CPT on the first day of classes so that you can continue in your job and register for the H-1B cap next year.
- **J-1 visa:** This might be an option for researchers at private companies.

- **L-1 visa:** If you work for a multinational company with offices outside of the United States, you may consider working abroad for 1-2 years and then returning to the United States as an intracompany transfer (L-1 status).
- **Extraordinary Ability (EB-1a) green card:** Same standard as the O-1 nonimmigrant visa above.
- **NIW (EB-2) green card:** For people with time left on their F-1 OPT or other status, they can consider filing a National Interest Waiver immigrant visa petition if they have an advanced degree and can argue that their work is in the national interest of the United States and that they have the accomplishments that makes them best fitted to further the national interest.
- **PERM green card (EB-2 or EB-3):** For people with 2-3 years left on their STEM OPT, their employers can consider filing for labor certification (PERM) without first going to H-1B.

These are only some of the possible options for someone who has not been selected in the H-1B cap. If you wish to review your options, please contact T&R to set up a consultation.

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## MAY 2023 VISA BULLITEN RELEASED

The U.S. Department of State released the visa bulletin for April and the USCIS has indicated that it will use “Final Action Dates” for employment-based cases. Here is a brief overview of the Final Action Dates for the employment categories:

- **EB-1** remains current for all countries except India (remaining at Feb 1, 2022) and China (remaining at Feb 1, 2022).
- **EB-2** remains retrogressed for all countries to July 1, 2022, except for India (remains at Jan 1, 2011) and China (unchanged at June 8, 2019).
- **EB-3** is current for all countries except India (remains at June 15, 2012) and China (advances to April 1, 2019).
- **EB-4** retrogresses for all countries to September 1, 2018. This includes “certain special immigrants” including religious workers, certain employees and retirees from international organizations (G-4), certain types of broadcasters, special immigrant juveniles, and others.
- **EB-4 retrogression explained:** The retrogression in the fourth preference category is unusual and caused by a consolidation of the applicants in the EB-4 category from El Salvador, Guatemala, and Honduras into the “All Chargeability

Areas Except Those Listed". The U.S. Department of State indicated that this was necessary to bring the EB-4 preference category into compliance with U.S. immigration law.

**Future retrogression:** It is anticipated that we will continue to see further retrogression in the EB-1, EB-2 and EB-5 categories for India and China. Foreign nationals who can file applications to adjust status now in these categories should do so by the end of the month.

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## GREEN CARD HOLDERS CAN GET EXTENSIONS BY MAIL

The USCIS announced on March 16<sup>th</sup> that lawful permanent residents (LPR or green card holders) can get evidence of their status, known as an ADIT stamp or I-551 stamp, by contacting the USCIS and having them mail an I-94 document with the ADIT stamp. Here is what the USCIS announced on its website:

*When lawful permanent residents call the USCIS Contact Center to request temporary evidence of status, an immigration services officer will verify their identity, their physical mailing address, and whether that address can receive UPS or FedEx express mail. They will then either schedule an in-person appointment for the lawful permanent resident, if needed, or submit a request to the USCIS field office to issue the ADIT stamp. If an in-person appointment is not needed, the USCIS field office will review the request for temporary evidence and mail the applicant a Form I-94 with ADIT stamp, DHS seal, and a printed photo of the lawful permanent resident obtained from USCIS systems.*

You can find more about this at <https://www.uscis.gov/newsroom/alerts/uscis-announces-additional-mail-delivery-process-for-receiving-adit-stamp>

**Automatic extension of green cards when file certain applications:** A permanent resident's green card is automatically extended (without the need for an ADIT or I-551 stamp) when they file following forms:

- **I-90** – application for a replacement green card; extends green card for 24 months.
- **N-400** - application for naturalization (without a Form I-90); extends 24 months.
- **I-751** - application to remove conditions on permanent resident status when married to a U.S. citizen; extends 48 months.
- **I-829** - application to remove conditions on permanent resident status based upon EB-5; extends 48 months.

For these applications, the USCIS will note an automatic extension of the green card on the receipt notices for several years or more; and ADIT or I-551 stamp is not needed. Instead, green card holders can present their expired green cards and the receipt notice for one of these applications when returning to the United States.

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