

## H-1B Electronic Registration Process Operational for the Fiscal Year 2021 Cap Season

On December 6, 2019, U.S. Citizenship and Immigration Services (USCIS) announced that it successfully completed the pilot testing for its online registration system that will be implemented in the 2020 H-1B lottery. This will result in changes to the manner in which employers will file H-1B cap-subject visa petitions, including those eligible for advanced degree exemption, for the fiscal year 2021 cap (October 1, 2020 through September 30, 2021). In 2020, employers will now need to first electronically register and pay a \$10 H-1B registration fee prior to filing any other documentation. USCIS hopes this online registration system will streamline processing by reducing the amount of paperwork and costs associated with the H-1B lottery.

In previous years, employers filed entire H-1B cap-subject petitions with all supporting documents prior to USCIS conducting the random selection lottery. Petitions were filed during the first week of April requesting start dates of October 1. USCIS reported that the process resulted in unnecessary paperwork and mailing costs for both petitioners and the agency itself. Beginning in 2020, the new process will require employers, or their authorized representatives, seeking H-1B workers subject to the cap, to complete the registration process that requires only basic information of their company and each requested worker. USCIS plans to open initial registration online from **March 1, 2020, to March 20, 2020**. USCIS noted that it may determine that additional time is necessary for submitting registrations if the agency does not receive enough registrations and subsequent petitions to reach the numerical visa allocations. After the registration period is complete, the random selection process will run on those electronic registrations and determine which registrants will be eligible to file H-1B cap-subject petitions for the 65,000 available slots. USCIS will then select the 20,000 visas reserved for those registrants with an advanced degree from a U.S. college or university. Eligible registrants will then submit complete H-1B cap-subject petitions with all supporting documents to USCIS. It is expected that employers will have 90 days from notification of having “won the lottery” to submit the full H-1B petition for the selected registrant.

As the recent demand for H-1B visas has far exceeded the 85,000 visas available per fiscal year, we anticipate that USCIS will receive more registrations than there are available visas. In fact, we anticipate that there will be a significant increase in the number of registrants for this year’s lottery based on having only to complete a registration that requires only “basic information” about the company and the worker.

USCIS plans to post step-by-step instructions and key dates as the initial registration period approaches. These instructions will offer guidance on how to complete the registration process on the USCIS website and information on key dates and timelines for the 2020 lottery. The U.S. Department of Homeland Security plans to publish a notice in the Federal Register in the coming weeks to announce the implementation of the H-1B registration system and provide additional details on the process.

We don’t know the specifics yet of what the registration system will entail, how it will operate, or what information will need to be provided. We don’t know when the actual lottery will be conducted after the registration period concludes, or when registrants will be notified. All of these questions should be answered when DHS publishes the notice in the Federal Register.

We urge employers to begin assessing their hiring needs to determine which candidates will require H-1B sponsorship. These might include F-1 students on OPT, J-1 workers not subject to the two-year foreign residency requirement, TN, E-3, and L-1 workers, as well as any foreign nationals who currently reside outside the United States. In order to decide whether to file an H-1B registration in March, we will want to analyze the employer, the position, and the beneficiary to confirm that the applicant is eligible for an H-1B visa.



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Remember that the H-1B lottery is only for cap-subject H-1B petitions. This does not relate to current H-1B workers who are extending or amending their visas or changing employers (unless the current H-1B worker is working for a cap-exempt employer). The lottery would also not apply to a foreign national working for a cap-exempt employer (an institution of higher education, a related or affiliated nonprofit entity, a nonprofit research organization, or a government research organization).

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**Any of our immigration attorneys can assist with any questions you may have about H-1B sponsorship.**