



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

December 29, 2020

Mr. Joseph Edlow  
Deputy Director for Policy  
U.S. Citizenship and Immigration Services  
20 Massachusetts Ave., NW  
Washington, D.C. 20529

**Re: Stakeholder Feedback on FY2021 H-1B Election Registration Process and Recommendations for Improvements**

Dear Mr. Edlow:

On behalf of the American Immigration Lawyers Association (AILA), we write to commend U.S. Citizenship and Immigration Services (USCIS) on its implementation of the H-1B electronic registration process for the fiscal year (FY) 2021 H-1B cap filing season, an important and historic milestone with respect to the agency's transition to digital immigration processing. Overall, AILA believes that the H-1B electronic registration process worked well, with the layout and interface of the system clean and relatively easy to navigate. There are however several areas for improvement. Given our mutual interest in an electronic registration process that is fair, transparent, efficient, and user-friendly, AILA is providing USCIS with some recommendations for improvements to the registration process that we hope USCIS will take into consideration for the upcoming FY2022 H-1B cap filing season. Our recommendations are based on feedback we have received from a broad spectrum of our 15,000 members and their U.S. employer clients.

**A. Background on FY2021 H-1B Electronic Registration Process**

On December 6, 2019, USCIS announced that it would be require employers seeking to file H-1B cap subject petitions, including those eligible for the advanced degree exemption, to first electronically register and pay the associated \$10 registration fee before filing a petition for the FY2021 H-1B cap.<sup>1</sup> Formal notice of this change was published in the *Federal Register* on January 9, 2020.<sup>2</sup> USCIS opened the initial electronic registration period from March 1, 2020 at noon (ET) through noon (ET) on March 20, 2020. On March 27, 2020, USCIS announced that it had received enough electronic registrations during the initial period to reach the FY2021 H-1B cap. Registrants and their representatives selected in the first round of selections were notified if they were selected via their USCIS online accounts no later than March 31, 2020. Registrations selected in the first round of selections had a 90-day filing window in which to submit a completed H-1B cap-subject

<sup>1</sup> See *USCIS Announces Implementation of H-1B Electronic Registration Process for FY2021 Cap Season*, AM. IMMIGRATION LAWYERS ASS'N (Dec. 6, 2019), <https://www.aila.org/infonet/implementation-of-h-1b-electronic-registration-pro>.

<sup>2</sup> *Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens*, 85 Fed. Reg. 1176 (Jan. 9, 2020).

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petition from April 1 through June 30, 2020. Because an insufficient number of H-1B cap-subject petitions were received by USCIS during the initial 90-day filing period, on August 14, 2020, USCIS conducted an additional round of selections from registrations held in reserve. The newly selected registrations were issued selection notices indicating a filing period of August 17, 2020 to November 16, 2020.

## **B. COVID-19 Pandemic Underscores the Importance of Digital Immigration Processing**

In the midst of the USCIS's rollout of the FY 2021 H-1B electronic registration and filing process, the Coronavirus Disease 2019 (COVID-19) swept the nation and the globe. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic. Subsequently, on March 13, 2020, a national state of emergency was declared in the United States over the coronavirus outbreak. In response to the global pandemic, many U.S. businesses and immigration law firms closed their facilities and took immediate steps to allow their staff to work remotely in order to minimize the spread of the virus. The significant disruption that the pandemic caused to the public's ability to continue "business as usual" as it relates to applying for immigration benefits underscores the value of electronic-based filing systems, like the H-1B electronic registration process, as viable alternatives to the agency's long-standing paper-based filing process. AILA encourages USCIS to continue to adopt additional electronic filing and processing options to help streamline and modernize the immigration filing process. AILA welcomes the opportunity to engage with USCIS on the agency's digital immigration processing initiatives and to provide important stakeholder feedback to the agency on these efforts.

## **C. AILA Appreciates USCIS's Engagement Before and During the Implementation of the H-1B Electronic Registration Process**

AILA appreciates USCIS's efforts to engage with stakeholders in advance of the implementation of the new H-1B electronic registration process. This included USCIS providing several webinars in February 2020 for registrants, attorneys and representatives, establishing a dedicated USCIS webpage with step-by-step instructions, information, and resources<sup>3</sup>, and adopting a Questions and Answers section on the USCIS website for frequently asked questions.<sup>4</sup> In particular, AILA and its members would like to thank USCIS for its participation at AILA's 2020 Spring Conference on March 6, 2020, during which time members of USCIS's Public Engagement and IT team clarified important aspects of the electronic registration process and addressed broad technical issues raised by AILA to ensure that stakeholders were able to effectively navigate the electronic registration process.

We do note, however, that the information shared by USCIS about the H-1B electronic registration process, including the webinars, was disseminated quite late in the process relative to the first day in which the registration window opened and therefore did not leave much time for registrants and attorneys to learn the new system and develop and implement new processes and procedures to prepare and submit electronic registrations pursuant to the new process. In the future, AILA

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<sup>3</sup> *H-1B Electronic Registration Process*, U.S. CITIZENSHIP & IMMIGRATION SERV. <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process> (last updated 5/26/20).

<sup>4</sup> *Id.*

encourages USCIS to engage with stakeholders several months in advance of adopting any new filing process or procedure to ensure that stakeholders are adequately informed about any potential changes and have the opportunity to resolve any technical issues before the electronic process is implemented.

AILA also appreciates USCIS's willingness to investigate and timely resolve broad problematic trends raised by AILA during the registration and filing process, such as reports that the PDF version of Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative was misidentifying attorneys as not eligible to practice law or that H-1B receipt notices were erroneously listing the authorized signatory as the petitioner instead of the U.S. employer. AILA's ability to raise broad problematic trends and technical issues to USCIS was mutually beneficial as it ensured that USCIS was quickly made aware of widespread technical problems disrupting users and had concrete case examples that could help ensure that the agency could investigate and resolve such issues timely and effectively so that stakeholders were not disrupted for lengthy periods of time during the limited registration window and filing process.

#### **D. AILA's Recommendations for Improvements to Electronic Registration Tool**

AILA offers the following recommendations to USCIS to enhance the H-1B electronic registration tool based on feedback from AILA's members who represent U.S. employers who operate in nearly all industries of the U.S. economy, including large corporations, small businesses, startups, universities, nonprofits and research institutions, among others. Our recommendations focus on improving the user experience, bolstering efficiency, minimizing confusion and user error, and enhancing transparency regarding the selection process, areas of mutual interest to both AILA and USCIS.

##### **a) Account Creation Issues**

###### *Account Type Selection Issues*

AILA appreciates the informational sessions and PowerPoint slides USCIS provided to assist with creating a USCIS online account.<sup>5</sup> However, for employers represented by attorneys there was often still confusion over which "type" of registration to complete:

- (1) I am an applicant, petitioner, or requestor,
- (2) I am a legal representative or
- (3) I am an H-1B registrant.

Some employers initially inadvertently registered under the incorrect account type as "I am an applicant, petitioner, or requestor" rather than as "I am an H-1B registrant." As it was not immediately clear that they had registered incorrectly, there was confusion and frustration as a result. Once discovered, one solution was to create a new account, but to accomplish that, the employer needed to use a different email address than the one used to create the prior account as more than one account per email is not permitted. In that case, the employer needed to either use

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<sup>5</sup> See *id.*

a private email address or create an alternative email account to register correctly. Some employers were concerned about using an email address other than their official corporate email address (e.g., concerns over violations of company email security policies, inability to access private email accounts on company owned devices, etc.).

AILA respectfully suggests the following solutions:

1. Eliminate the two different petitioner registration types from the electronic registration portal (i.e., “I am an applicant, petitioner, or requestor” and “I am an H-1B registrant” and keep only the “I am an H-1B registrant” option), or
2. Provide a method for changing the account type after it has been created, or
3. Provide a separate video presentation for each “petitioner” account type (i.e., one for the applicant, petitioner or requestor account type and one for the H-1B registrant account type).

#### *Issues for Large Companies with Multiple Subsidiaries*

Large companies with multiple subsidiaries and shared Human Resources services models often wish to designate only one or just a few individuals to be responsible for the registration of all subsidiaries and the handling of all related H-1B registration submissions. However, as noted above, once an email address is used in connection with an employer account, it cannot be used in connection with another. Some of these individuals were concerned for the reasons noted above about using email addresses other than their official corporate email address and also had difficulty tracking multiple email accounts.

AILA respectfully suggests the following solutions:

1. Create a system for a “parent” account where one user could add multiple subsidiary accounts to the main parent account. As a model, USCIS could look to the Department of Labor’s (DOL) Foreign Labor Application Gateway (FLAG) system which provides the option of creating a network with a master account and linking to subaccounts.
2. Alternatively, remove the prohibition on using the same email address to create more than one account.

#### *Staff working for and under the supervision of an accredited attorney to prepare registrations*

The Question and Answer section of USCIS’s H-1B Electronic Registration Process page includes the following question and answer:

Q. Will the system allow for multiple members of staff to log into my account at the same time?

A. No. You must agree to Terms of Use that include an attestation that you are the person that holds the account and you will not share your account with others or allow others to use your account.”<sup>6</sup>

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<sup>6</sup> *Id.*

For efficiency purposes, attorneys often prefer to have other associated attorneys, paralegals, or other legal support staff create the accounts and prepare the registrations for the attorney of record's review and correction if necessary.

AILA respectfully suggests the following solutions:

1. Change the language in the Terms of Use and Q&A to allow associate attorneys, paralegals and/or other legal support staff working under the supervision of the attorney of record to log into the principal attorney's USCIS online account to prepare registrations, and
2. Allow for the creation of sub accounts within the principal USCIS online account for other attorneys associated with the attorney of record, paralegals, and/or other legal support staff of the attorney of record. As a model, USCIS could look to the DOL's FLAG system which provides the option of creating a network with a master account and subaccounts.

#### **b) Challenges Entering Data into the Electronic Registration Portal**

Several AILA members reported significant challenges entering data into the electronic registration portal, specifically with having to repeatedly input the same data, such as the attorney name and contact details. Having to manually input data that does not change from registration to registration not only creates an inefficient and time intensive process in both preparing and reviewing the registrations but significantly increases the opportunity for data errors.

AILA respectfully suggests the following solution:

1. Create a feature that allows attorneys to input their relevant details (e.g., name, contact details, etc.) once and then automatically populate that data into the appropriate sections of the registration. A similar process has already been successfully implemented by the DOL in their FLAG portal.

#### **c) Cumbersome Process for U.S. Employers to Review and Accept the Form G-28 and Registrations from their Attorney of Record**

Several members have reported that their U.S. employers found the process to review, accept and sign the electronic Form G-28 and then review, accept and sign the electronic H-1B registration to be unnecessarily confusing and cumbersome. Some users were confused by the two-step process and presumed they had completed the registration once they had completed the Form G-28 authentication process.

AILA respectfully suggests the following solution:

1. Streamline the process to include all of the U.S. employer's authorizations (Form G-28 and H-1B registration) in one section of the portal requiring just one electronic signature at the end.

#### **d) Post Data-Entry Issues**

##### *Editing Form G-28s after Petitioner has Authenticated the G-28*

Once a petitioner has authenticated a G-28, there is no mechanism to edit the data in the Form G-28 if there is a correction that needs to be made or typo that needs to be addressed. Instead, Form G-28 must be deleted, redone, and reauthenticated which is inefficient and burdensome. AILA respectfully suggests the following solution.

1. Enable attorneys to edit Form G-28 information after a petitioner has authenticated the G-28.

##### *Registration and & G-28 Withdrawals*

When a registration is withdrawn by the petitioner or attorney, there is no confirmation that the registration has been withdrawn. AILA respectfully suggests the following solutions:

1. When a registration is withdrawn, please send an email message to both the petitioner and the attorney notifying them that the registration has been withdrawn. This will ensure greater transparency during the registration process and minimize the potential for errors, such as duplicate registrations.

When a G-28 is withdrawn, there is no confirmation that the G-28 has been withdrawn. AILA respectfully suggests the following solution:

1. When a G-28 is withdrawn, please send an email message to the attorney of record that the G-28 has been withdrawn. This will ensure minimize confusion and enhance efficiency during the registration process.

##### *Batch Registrations*

The user interface for batch registrations is not very user friendly for attorneys and petitioners who are submitting a large number of registrations in a batch. AILA respectfully suggests the following solutions:

1. In addition to enabling data in a batch to be exported to an Excel document, AILA respectfully requests that USCIS create a mechanism for data in an Excel document to be uploaded to the portal or add a report function.

##### *Registration Fee Payment Confirmation*

USCIS does not provide confirmation to registrants that the registration fee has cleared or been paid. This is problematic because for some registrations filed during the FY2021 registration filing window, stakeholders were not be made aware of payment issues until after the registration has been submitted but the registration window period had already closed, resulting in a rejected

registration and the inability to remedy the situation. AILA respectfully suggests the following solutions:

1. Send an email notification to both the petitioner and the attorney confirming the payment has cleared, as well as a notification if the payment fails to clear; and
2. Allow for payment confirmation details (e.g., payment pending, cleared, declined, etc.) to be viewable in the registration portal.

#### **e) Duplicate Registration Issues**

During the FY2021 registration period, AILA received reports from a number of registrants and attorneys that many H-1B registrations were rejected by USCIS as duplicates. In total, AILA received reports from more than 60 attorneys involving at least 170 registrations. Subsequently, USCIS disclosed that there were at least 900 registrations rejected as duplicates.<sup>7</sup> In order to avoid duplicative registrations from being filed, whether by human error, or because of systemic issues, AILA recommends that USCIS implement a warning that a user is about to submit a duplicative registration prior to being able to submit the registration. The consequences of submission of a duplicative registration, due to no fault of the beneficiary, are so high, potentially leading to the beneficiary's inability to be considered for the annual H-1B visa lottery and/or maintain a valid status in the United States, that we feel this small fail-safe would provide an added measure of protection and help to safeguard the integrity of the H-1B registration system.

#### **f) Registration Selection Issues**

AILA appreciates the timely manner with which USCIS completed the H-1B initial electronic registration selection process and correspondingly notified registrants of their initial selection. However, identifying the specific beneficiaries selected was cumbersome for employers and attorneys, as there was no means to sort registrants by "selected" versus "submitted." This was particularly problematic for large employers and/or law firms registering for many employers, as they were required to search through hundreds or thousands of registrations to find those that indicated "selected." To facilitate this process, AILA respectfully offers the following recommendations:

1. Include the beneficiary's name and/or registration number in the email alerting the registrant of selection;
2. Provide a sort function in the registration tool to allow for the ability to batch registrations by "selected" versus "submitted"; and
3. Include a "date selected" column as another means to distinguish between "selected" versus "submitted," which will also be useful if there is a second round of selections.

While the second round of selections was welcomed, for the reasons noted above, there were challenges in identifying registrations selected in the second round, as there was no means to distinguish them from those selected in the first round. Moreover, members report receiving

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<sup>7</sup> *USCIS Disputes Improperly Denying 900 H-1B Visa Registrations*, FORBES (Apr. 13, 2020), <https://www.forbes.com/sites/stuartanderson/2020/04/13/uscis-disputes-improperly-denying-900-h-1b-visa-registrations/?sh=101b376d70a6>.

several email notifications for a single new registration selection, which was only determined after manually searching through many registrations. Including the registration number and/or beneficiary's name in the selection email would eliminate this confusion, as employers and attorneys would be able to distinguish between duplicate emails and distinct selections.

#### *Ability to Withdraw Registration Post-Selection*

AILA understands that although employers are required to attest that the registration is for a bona fide position, the employer is not obligated to file the H-1B petition on behalf of the selected beneficiary. For such cases, USCIS has suggested in the Question and Answers section of its H-1B electronic registration process webpage that the employer retain documentation evidencing the reason for non-filing and present it to USCIS if questioned.<sup>8</sup> However, it is not clear why the selected registration itself cannot be withdrawn. From a mechanical perspective, USCIS could add a "withdraw" button next to each selection, allowing for the selected registration to be withdrawn if needed. The benefit of permitting U.S. employers to withdraw a selected registration is that it would provide advance notice to USCIS of the number of H-1B petitions that will be filed during the filing window, allowing USCIS to make the best use of its resources. This would also enable USCIS to timely plan for a second lottery, if necessary.

#### *Transparency in the Selection Process*

Stakeholders, including U.S. employers, attorneys, and H-1B beneficiaries, would appreciate greater insight into the registration selection process. USCIS could adopt a process similar to the selection process for the Diversity Immigrant Visa Lottery program in which each H-1B registration is assigned a number. Those within the first 20,000 or so of the Master's cap and within the first 65,000 or so of the regular H-1B cap would be selected in the first round. If there were a second-round selection and filing process, USCIS could simply indicate which numbers were "current" and eligible to file a cap-subject H-1B petition. This would alleviate the confusion and uncertainty detailed above with trying to determine which registrations were in fact selected. It would also allow employers and beneficiaries to better plan as those with a very high number would know it is unlikely that they would be able to file for the H-1B cap in that fiscal year, allowing them to make other plans.

#### **g) Customer Service Issues**

AILA understands that it takes time to work out technical issues when rolling out a new electronic system. Towards that end, we would recommend that USCIS establish a dedicated phone line or email box to allow registrants to report technical glitches that would allow for quick resolution. For example, in FY2021, receipt notices issued by USCIS initially listed the authorized signatory as the "petitioner," instead of the name of the U.S. company or organization. In addition, many of the second-round selection notices contained the wrong instructions for filing. Specifically, these listed the deadline for filing as June 30, 2020, even though the actual selections were made well after that date in August 2020. This wrought a great deal of confusion, which could have been avoided if there had been an avenue to contact USCIS directly.

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<sup>8</sup> *H-1B Electronic Registration Process*, *supra* note 3.

## **h) October 1 Start Date**

Finally, AILA has received widespread reports from our members during the FY2021 H-1B cap filing season expressing confusion about the agency's regulatory requirement set forth at 8 CFR section 214.2(h)(8)(iii)(A)(4) which was adopted as part of the January 31, 2019 Final Rule entitled "Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens."<sup>9</sup> 8 CFR section 214.2(h)(8)(iii)(A)(4) provides:

*A petitioner may submit a registration during the initial registration period only if the requested start date for the beneficiary is the first day for the applicable fiscal year. If USCIS keeps the registration period open beyond the initial registration period, or determines that it is necessary to re-open the registration period, a petitioner may submit a registration with a requested start date after the first business day for the applicable fiscal year, as long as the date of registration is no more than 6 months before the requested start date.*

Although this language is silent on the required start date on a Form I-129 that is being filed based on a selected registration, USCIS has interpreted this regulation to require that a 10/1/2020 start date be listed on Form I-129, Petition for a Nonimmigrant Worker, for H-1B cap-subject petitions submitted in the first and second filing windows based on registrations filed in the initial registration period, otherwise a petition may be rejected or denied.

This ambiguity in the regulations has resulted in numerous H-1B cap-subject petitions for specialty occupation professionals being rejected or administratively closed if they failed to list a 10/1/20 start date on Form I-129. This regulation and the agency's implementation of it has caused considerable stakeholder confusion, particularly for H-1B cap subject petitions filed during the second filing window which ran from mid-August to November 16, 2020. For H-1B cap-subject petitions filed during the second-round filing window, in many cases, the Labor Condition Application (LCA) was not prepared and certified until after October 1, 2020. In such cases where the LCA was prepared after October 1, 2020, the LCA necessarily has a start date after October 1, 2020 because a start date on an LCA cannot be backdated. What this means is that the LCA start date and the start date on the Form I-129 did not align. This is not intuitive in practice for petitioners to backdate the Form I-129 with a start date earlier than the start date listed on the LCA. Although AILA reached out to the agency for clarification regarding this issue earlier this summer, the agency did not issue a broad stakeholder announcement that it would accept petitions in situations where the start date listed on the Form I-129 was earlier than the start date listed on the LCA, leaving many stakeholders unaware of the agency's new practice.

To minimize confusion regarding this issue, AILA recommends that USCIS modify its regulation at 8 CFR section 214.2(h)(8)(iii)(A)(4) permitting a requested start date on or after the first day for the applicable fiscal year. Specifically, AILA proposes the following language (in bold):

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<sup>9</sup> Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens, 84 Fed. Reg. 888 (Jan. 31, 2019).

*(4) Limitation on requested start date. A petitioner may submit a registration during the initial registration period only if the requested start date for the beneficiary is on the first day for the applicable fiscal year. **If USCIS selects registrations from those that are on reserve pursuant to subparagraph (7), the requested start date on the petition may be any date within the filing period noted on the selection notice.** If USCIS keeps the registration period open beyond the initial registration period, or determines that it is necessary to re-open the registration period, a petitioner may submit a registration with a requested start date after the first business day for the applicable fiscal year, as long as the date of registration is no more than 6 months before the requested start date.*

Alternatively, given that the regulation is silent on this matter, AILA recommends that USCIS issue policy guidance to address this ambiguity. Such guidance should make clear that if a registration requesting a 10/1 start date and filed in the initial registration period is selected to be filed in a period that is open on or after 10/1, that the petitioner may request the actual start date rather than the one listed on the initial registration.

At a minimum, AILA recommends that USCIS highlight the limitation on the requested start date more prominently in the agency's informational webinar and materials relating to the H-1B cap-filing season and include language about this requirement on all selection notices.

#### **E. Conclusion**

We thank you for your consideration of this matter. If you require any additional information or clarification, or would be available to meet with AILA to discuss these recommendations in more depth, please contact Sharvari (Shev) Dalal-Dheini at (202) 507-7621 or by email at [sdalal-dheini@aila.org](mailto:sdalal-dheini@aila.org) or Diane Rish at (202) 507-7642 or by email at [drish@aila.org](mailto:drish@aila.org).

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

cc: Kathryn Rexrode, Associate Director, External Affairs Directorate, USCIS  
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