



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

November 8, 2019

*Submitted Via Email*

OMB USCIS Desk Officer  
[dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov)

**Re: OMB Control Number 1615-0144**  
USCIS 30-Day Notice and Request for Comments:  
Revision of a Currently Approved Collection: H-1B Registration Tool

Dear OMB USCIS Desk Officer:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced 30-day notice and request for comments published in the Federal Register on October 9, 2019.<sup>1</sup>

Founded in 1946, AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

AILA previously submitted comments on the H-1B electronic registration tool to USCIS during a 60-day comment period which closed on August 26, 2019.<sup>2</sup> Given the importance of the H-1B electronic registration tool to our members, AILA welcomes the opportunity to provide additional comments on the tool during this 30-day comment period, particularly in light of recent modifications that USCIS has made to the electronic registration tool, which are reflected in updated screen shots of the H-1B registration tool which were made available to the public on October 9, 2019 via the regulations.gov website.<sup>3</sup> We believe that our members' collective expertise and experience makes us particularly well-qualified to offer comments on the electronic registration tool that will benefit the public and the government.

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<sup>1</sup> 84 Fed. Reg. 54159 (Oct. 9, 2019).

<sup>2</sup> See *AILA Submits Comments on USCIS on Proposed Revisions to the H-1B Registration Tool*, AM. IMMIGRATION LAWYERS ASS'N (August 26, 2019), published on AILA InfoNet at [Doc. No. 19090330](#) [hereinafter *AILA Comment on H-1B Registration Tool*].

<sup>3</sup> See *H-1B Registration Tool – Screen Shots*, REGULATIONS.GOV (Oct. 9, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0012-0054> [hereinafter *H-1B Screen Shots*].

## **AILA's Continued Concerns Regarding the Timing of the Agency's Implementation of the H-1B Electronic Registration Tool**

As an initial matter, as reflected in comments previously submitted to USCIS by AILA earlier this year relating to the H-1B registration system<sup>4</sup>, AILA remains concerned regarding the timing of USCIS' implementation of the H-1B electronic registration tool. While AILA appreciates that USCIS has communicated its intention to implement the registration process for the fiscal year (FY) 2021 H-1B cap season subject to continued testing of the system<sup>5</sup>, to the extent that USCIS does in fact implement the H-1B electronic registration tool in time for the FY 2021 cap season, AILA strongly urges USCIS finalize this regulation, complete the requisite testing of the system, and publish a notice in the *Federal Register* as soon as possible, and no later than the end of the year. This will ensure that U.S. employers have adequate clarity regarding the process that will commence in only a few short months and that attorneys, U.S. employers, and other stakeholders have sufficient time to adjust their H-1B filing preparations and adequately familiarize themselves with the electronic registration tool well in advance of the initial registration period.

Many U.S. employers and attorneys have already begun preparing for the FY 2021 cap season. Until DHS announces in the *Federal Register* that the agency will implement the electronic registration tool for the FY 2021 cap season, as a precautionary measure, many attorneys and U.S. employers will prepare for the FY 2021 H-1B cap filing window as they normally would by taking steps to prepare full H-1B petitions, negating the cost savings that underline the agency's reasoning for the H-1B registration requirement.<sup>6</sup> Indeed, given the lack of certainty about whether the H-1B electronic tool will be in place for the upcoming FY 2021 H-1B cap season, many attorneys and U.S. employers have already begun preparing for the FY 2021 H-1B cap as they normally would by circulating intake questionnaires, collecting supporting documentation from beneficiaries, and expending fees and costs for professional services. The longer DHS waits to make a formal announcement, the more attorneys and U.S. employers will follow a similar course of action, further negating the cost savings that underline the agency's reasoning for the H-1B registration requirement.

### **Comments on H-1B Registration Tool Information Collection**

#### **I. About Registrant Section**

AILA notes that in the "About Registrant" section of the H-1B registration tool, USCIS has updated the first question regarding the U.S. employer / agent submitting the registration. Previously the question was posed as "*What is the legal name of the petitioning company or*

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<sup>4</sup> See *Comment on H-1B Registration Tool*; See also *AILA Submits Comments to H-1B Registration Fee Proposed Rule*, AM. IMMIGRATION LAWYERS ASS'N (Oct. 4, 2019), published on AILA InfoNet at [Doc. No. 19100701](#).

<sup>5</sup> *USCIS Provides Response Regarding H-1B Registration Tool*, AM. IMMIGRATION LAWYERS ASS'N (Sept. 30, 2019), published on AILA InfoNet at [Doc. No. 19100304](#).

<sup>6</sup> See 83 Fed. Reg. 62406 (Dec. 3, 2018) at 62419 (stating that the main benefit to U.S. employers associated with the H-1B registration proposed rule is that employers will be able to forego the time and expense of preparing and filing a full H-1B petition, with all supporting documentation, unless USCIS has selected the employer's registration).

organization?” The question now states, “What is the legal name of the **prospective** petitioning company or organization?” (emphasis added).<sup>7</sup>

AILA applauds this revision as the registering company or organization will not yet be petitioning the prospective beneficiary at this stage of the process.

## II. About Beneficiary Section

### a. Master’s or Higher Degree from a U.S. Institution of Higher Education

In the “About Beneficiary” section, USCIS has included a question about the beneficiary’s master’s or higher degree attainment. Specifically, USCIS asks beneficiaries to select either “Yes” or “No” to the following question:

*Does the beneficiary have a master’s or higher degree from a U.S. institution of higher education such that the beneficiary is eligible for the advanced degree exemption under INA 214(g)(5)(C) and requesting consideration under the advanced degree exemption?*

AILA recommends that USCIS modify the question regarding the beneficiary’s U.S. master’s or higher degree attainment, as some beneficiaries may not have attained a master’s or higher degree from a U.S. institution of higher education at the time of the H-1B registration period, yet may still be eligible for the exemption at the time of filing the H-1B petition if their registration is ultimately selected.<sup>8</sup> Specifically, USCIS could revise the question as follows:

*Will the beneficiary be requesting an exemption from the numerical limitation pursuant to INA 214(g)(5)(C) based on having a master’s or higher degree from a U.S. institution of higher education at the time of filing an H-1B petition?*

## III. Review and Submit Section

### a. Review Process

In the “Review and Submit” section, USCIS provides the following instructional text:

*We will review your registration to check for accuracy and completeness before you submit it.*

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<sup>7</sup> *H-1B Screen Shots*, *supra* note 3 at page 3.

<sup>8</sup> AILA notes that in the final H-1B registration regulation, USCIS clarified that with respect to the date by which a beneficiary must complete degree requirements (i.e., by the registration date or complete petition filing date), USCIS indicated that the final rule “does not alter the general requirement for establishing eligibility at the time the petition is filed, but merely sets forth an antecedent procedural step that must be followed in order to establish eligibility to file an H-1B cap petition . . . .” See Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens, 84 FR 888 (Jan. 31, 2019) at 902.

*We encourage you to provide as many responses as you can throughout the registration, to the best of your knowledge. Missing information can slow down the review process after you submit your registration.*

AILA recommends that USCIS strikes from its instructions that it will review the registration for “accuracy”, as the agency will not be confirming the validity of the information provided during the registration process, but rather will only be confirming whether the form has been completely filled out. Moreover, the instructions stating that the registrant should provide “as many responses as you can” appears to indicate that all fields are optional, but that contradicts language in the next section which states that a registration will not pass the review process unless “you have completed all required fields and responses.” AILA recommends that this instruction language be revised to read:

*We will review your registration to check for completeness before you submit it. Missing information can slow down the review process after you submit your registration.*

This revision will provide necessary clarity for stakeholders about the review process.

*b. Alerts and Warnings*

AILA notes that USCIS has updated the H-1B registration tool to provide an alert / warning to notify registrants if they have provided an incomplete or invalid response to particular questions before they are able to submit the completed registration to USCIS. Specifically, in the H-1B registration tool screen shots that USCIS released to the public on October 9, 2019<sup>9</sup>, USCIS provides the following tin the “Review and Submit” section on page 9:



AILA applauds the inclusion of an alert / warning feature to prevent registrants from inadvertently submitting registrations that contain incomplete or invalid responses to certain questions that could result in the registration being disqualified.

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<sup>9</sup> *H-1B Screen Shots*, *supra* note 3 at page 13 (noting that “[y]ou can track the status of your registration through your USCIS account.”).

AILA reiterates its recommendation that USCIS also ensure there is a warning system in place for when multiple registrations are mistakenly submitted for the same beneficiary by a registrant.

*c. Tracking Status of Registration Online*

AILA notes that USCIS has updated the H-1B registration tool to provide the ability for registrants to track the status of a registration online after it has been submitted to USCIS.<sup>10</sup> AILA applauds USCIS for providing the ability for registrants to track the status of their registration online. As noted in AILA's previous comment, providing registrants with the ability to track the status of a registration online will allow registrants to remain informed about the status of a registration throughout the H-1B registration process and will increase trust among stakeholders about USCIS and the new H-1B registration tool.<sup>11</sup>

*d. Editing a Registration After Submission*

Based on the most recent version of the H-1B registration tool screen shots released to the public on October 9, 2019, it is unclear whether a registration may be edited after it has been submitted to USCIS. AILA reiterates our recommendation from our August 29, 2019 comment that USCIS allow for submitted registrations to be edited through the registrant's USCIS account up until the close of the registration period.<sup>12</sup> This will allow registrants to quickly and efficiently correct typographical errors, or make edits to the registration in the event there are unexpected changes to the U.S. business, rather than having to delete the submitted registration and complete a whole new registration. Similarly, USCIS should also provide registrants with a mechanism to correct typographical errors after the registration period has closed, but before the registration selection is conducted.

#### **IV. Operational Recommendations Regarding the H-1B Registration Tool**

Based on feedback AILA received from its members and U.S. employers who participated in the usability testing of the registration tool earlier this year, AILA offers the following recommendations to USCIS to improve the operational aspects of the H-1B registration tool:

- AILA recommends that the H-1B registration tool be developed to permit multiple individuals to be logged-in to the registration tool at the same time on behalf of the same U.S. employer ("the registrant") so that they can simultaneously add beneficiaries on behalf of the registrant during the designated registration period. These individuals may be employed by the U.S. employer, serve as outside legal counsel on behalf of the U.S. employer, or employed by a supporting company. The ability for multiple users to access the registrant's account simultaneously would more closely align with the realities of most U.S. employers and immigration law firms, which generally have more than one person

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<sup>10</sup> *Id.*

<sup>11</sup> *AILA Submits Comments on USCIS on Proposed Revisions to the H-1B Registration Tool.*

AM. IMMIGRATION LAWYERS ASS'N (August 26, 2019), published on AILA InfoNet at [Doc. No. 19090330](#).

<sup>12</sup> *See AILA Comment on H-1B Registration Tool, supra* note 2.

simultaneously handling the H-1B process for a particular U.S. employer (e.g., Senior Attorney, Associate Attorney, Immigration Paralegal, Administrative Assistant, etc.). To that end, AILA recommends that USCIS expand the range of individuals permitted to login to the H-1B registration tool on behalf of a U.S. employer.

- AILA recommends that USCIS provide the ability for registrants to download into an Excel spreadsheet or PDF document a list of all beneficiaries registered by the registrant before the registration is submitted to USCIS. This would allow registrants to efficiently audit the information inserted into the registration tool and make any necessary corrections to the information prior to submission. This is particularly relevant for large U.S. employers who may be registering a large volume of beneficiaries who would like to ensure that all beneficiaries have been correctly registered prior to submission.

## **Conclusion**

We appreciate the opportunity to provide additional comments on the H-1B registration tool and look forward to a continuing dialogue with USCIS on these and related issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION