

## **AILA's H-1B Registration Tool Feedback**

The American Immigration Lawyers' Association (AILA) extends our gratitude for the continued opportunity to provide feedback on the H-1B electronic registration tool and process. Overall, AILA believes the H-1B Electronic Registration System works well. The layout and interface of the system is clean, and easy to set up and navigate.

In particular, AILA thanks USCIS for its willingness to work with our members during the registration period to resolve technical glitches in a timely manner. The prompt responses to time-sensitive issues, *e.g.*, the display issues on the PDF for the ability to practice law and understanding English questions, were greatly appreciated. While the process to report general glitches for the H-1B Electronic Registration System was somewhat cumbersome, AILA members reported the IT interface issues were resolved promptly, enabling them to proceed with the submissions within the H-1B registration period.

AILA welcomed the presentations USCIS conducted for employers and attorneys regarding the H-1B Electronic Registration System, as well as the online step-by-step instructions, FAQs with screen shots and PowerPoints. These tools and resources were clear references and useful guides. AILA and its members thank USCIS for creating these resources and encourage USCIS to continue to provide insights and additional training and education materials for the H-1B Electronic Registration System.

AILA also appreciates the FY2023 change which enables employers to delete their accounts if they registered for the incorrect account type. This functionality eliminated the confusion and frustration that would require a different email address to resolve the issue. We also applaud USCIS's addition of the duplicate registration checker for the FY2023 H-1B registration system.

With the goal of making the registration process even more efficient, AILA would like to offer the following suggestions to further enhance the H-1B Electronic Registration System.

### **Suggested Improvements**

- **Alerts Prior to Submitting a Duplicate Registration**

As noted above, AILA applauds the addition of the duplicate registration checker for the FY2023 H-1B registration system. However, the issue of duplicate registration continues to plague the system due to the employer login and attorney electronic passcode handshake process. Because the duplicate checker verifies only the cases within a batch at a certain point in time, and does not prevent future duplicate registrations, the duplicate checker was not able to catch some of the duplicate registrations *between* the login and handshakes, nor between multiple registration batches, such as cases where an employer needed to break up their registration submissions into multiple entries to comply with the 250 individual limit per batch submission. To avoid the filing of duplicate registrations, whether by human error, or because of systemic issues due to real-time submissions, we recommend that USCIS implement an additional process to perform a search of the database of already submitted registrations for potential duplicates, prior to transferring a registration to pay.gov. Cross-checking the current submission against itself and against previous registration filings (*e.g.*, running a real time query by FEIN and passport number) before submission of each batch will address the issue raised.

In addition, AILA proposes the implementation of a pop-up warning for the "H-1B employer/registrant" before transferring to the pay.gov payment page noting language similar to:

If you have a representative who has provided a passcode to you, please verify with your representative before completing the registration by submitting payment. Submitting a duplicate registration with payment for the same beneficiary within the same fiscal year will result in rejection and cancelation of all registrations for this beneficiary for the fiscal year.

Another suggestion is to disable the payment function or the ability to be transferred to the pay.gov page if an employer/H-1B registrant clicks 'yes' on a pop-up warning with a question on whether the employer/H-1B registrant has a representative/attorney and a passcode. This would require the employer/H-1B registrant to affirmatively answer a question which would prevent duplicate registration if an employer/H-1B registrant is represented by an attorney and was given a passcode but for whatever reason went through the registration input pages on their own.

The consequences of submission of a duplicative registration, due to no fault of the beneficiary, are so high, potentially leading to their inability to maintain valid nonimmigrant status in the United States, that we feel these simple fail-safe options are critical to providing protection to these individuals and safeguard the integrity of the H-1B registration system.

- **Public Engagement and Training Materials**

AILA appreciated the informational sessions and PowerPoint slides USCIS provided to assist with the account creation process. However, for employers who are represented by attorneys/representatives there are no PowerPoint or screen shots to guide them on how to complete their required steps to enter the passcode sent by their attorney/representative, review the application and complete the electronic handshake process. As a result, many attorneys/representatives had to use different accounts so they could take screen shots of what clients would see and create instructions from those screen shots. AILA requests that USCIS include a demonstration of the client-side of the employer passcode, review and electronic handshake process in their future informational sessions for attorney/representative accounts and also create a separate PowerPoint for attorneys/representatives to provide to clients.

AILA also requests that USCIS conduct updated presentations and engagements for attorneys/representatives as well as for individual employers/registrants each year since there are new attorneys/representatives and individual employers/registrants who are unfamiliar with the H-1B Electronic Registration System each year. Although we appreciate that the previous years' FAQs and presentations are maintained and easily found online, we believe that annual engagements for both user groups will enhance efficiency, increase user familiarity with the system, highlight new features and reduce redundant questions that can be resolved without contacting USCIS.

- **Account Creation**

AILA respectfully suggests that USCIS include additional information on the categories of email addresses that are permitted to be used in the system on the account creation page. AILA members have noted that less common email domain extensions, such as ".io," are rejected by the page as invalid. Therefore, it will assist with resolving this confusion if USCIS either allows for a wider variety of domain extensions for the email addresses or explicitly publicizes which domain extensions are allowed for the H-1B Electronic Registration System.

- **G-28 Employer Issues/Employer Type**

Like the paper version, Form G-28, within the registration system, asks for Employer Name and then subsequently asks users to input First Name, Middle Name, and Last Name. Because the H-1B Electronic

Registration System version of Form G-28 makes the First Name, Middle Name, and Last Name boxes required fields, users have experienced confusion on whether those boxes should be marked “N/A” when an employer, and not an individual, is filing the registration.

Our suggestion is to allow for a checkbox where an employer/registrant can note that it is an entity and not an individual, thus bypassing the requirement for the First Name, Middle Name, and Last Name.

- **Duplicative Data Entry**

Although there is admittedly not much information required to complete both the Form G-28 and the individual registration information, much of the information is repeated in both. Would it be possible to have the information entered into Form G-28 populate into the registration itself? Similarly, for attorneys/representatives working with many small employers, entering the attorney/representative information for each G-28 is time consuming and increases the risk of typographical errors. Would it be possible to create a mechanism for the attorney/representative information to be tied to their MyUSCIS account such that only the client information would need to be entered for each new G-28? We note that this functionality is currently available on the Department of Labor’s Foreign Labor Application Gateway (FLAG).

- **Issues for large companies with multiple subsidiaries**

Large companies with multiple subsidiaries and shared Human Resources service models often wish to designate one, or a few individuals, to be responsible for the registration of all subsidiaries and handling of all related H-1B lottery submissions. However, once an email address is used in connection with the creation of an account, it cannot be used in connection with another account. The less than efficient solution for these employers has been to create multiple email addresses for these individuals. Some of these individuals were concerned about using email addresses other than their official corporate email address, while others also had difficulty tracking multiple email accounts. AILA respectfully requests that USCIS create a system for a “parent” account wherein one user could maintain multiple registration accounts under the same email address.

- **Staff/Associated Attorneys**

The Q&A on the H-1B Electronic Registration Process page includes the following:

*“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.”*

For efficiency purposes, attorneys would often prefer to have other associated attorneys, paralegals, or other legal support staff assist in the creation of accounts as well as the preparation of draft registrations for the attorney of record’s review (and correction, as necessary).

AILA respectfully suggests the following solutions:

1. Change the language in the Terms of Use and Q&A to allow associate attorneys and/or staff working under the supervision of the attorney of record to perform such tasks; and/or
2. Allow for the creation of sub accounts for other attorneys associated with the attorney of record and/or support staff of the attorney of record, which would permit these users to prepare entries

for the attorney of record's final review and submission. We note this functionality is familiar to attorneys who regularly use the DOL's FLAG system.

- **Cumbersome Process for Clients to Review and Accept G-28s and Registrations**

Several members reported that their clients found the process to review, accept and sign the electronic Form G-28 and then separately have to 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 portion of the authorization. In terms of post-data input and corrections, employers and attorney/representatives alike are still confused as to what to do if an employer discovers an error on the Form G-28 or in the registration. Should they accept it and then tell the attorney/representative of the errors, reject just the form with the error or reject both forms? Employers/registrants seem to believe that rejecting Form G-28 and/or registration will delete the registration when, in fact, accepting a document with an error will actually require the registration to have to be deleted and recreated.

AILA respectfully suggests the following solutions:

1. Adding a warning box or other instruction alerting the employer/registrant that registration with an attorney/representative is a two-part process and that, once Form G-28 has been reviewed and accepted, an employer/registrant must then proceed to the registration section to review and confirm the information completed by their attorney/representative.
2. Adding an instruction that if there are errors in Form G-28 and/or the registration, an employer/registrant should reject *both* forms, which will then make them available for the attorney/representative to edit and return for review.
3. An additional step that would be helpful and reduce confusion (and potentially reduce accidental duplicate registrations) would be to have a pop-up confirmation box or display when an employer/registrant has finished both Form G-28 and registration to note that the employer/registrant has completed their steps, and the registration will now be returned to the attorney/representative to confirm and pay for the registrations.

Specifically, for FY2023, members reported that clients proceeded to enter their own registration even though a passcode was provided by their attorney/representative. Members reported that when clients logged onto the H-1B Electronic Registration System, the option to register is on the top part of the screen with the passcode option all the way on the bottom of the page. This user interface layout led some employer/registrant users to click on the register button instead of scrolling down to the bottom to enter the passcode provided by the attorneys.

AILA respectfully requests that the option to submit a passcode be placed more prominently on the page, *e.g.*, near the top of the page, above the section to create a new registration. We also suggest that a warning box, as described above, be prominently placed on the landing page for the registrant system to note that if a registrant has a passcode from a representative, a new registration should not be started. The registrant should not enter any biographical information but should rather enter the passcode, where indicated, to access the draft registration prepared by their attorney/representative.

- **One Time Passcode and Alert to Registrant of the Two-Part Verification**

AILA members reported that many clients misunderstood the verification process and logged out after authenticating and signing Form G-28 without proceeding to the registration. They were then not able to access the registration again because the passcode was no longer valid. This misstep resulted in AILA members having to delete the registration and related Form G-28, and then reenter a registration and Form G-28 so that a new passcode could be generated.

AILA respectfully suggests the following:

1. Allow the passcode to be used more than once, *i.e.*, make it unique to a registration, not a login. With this change in functionality, clients/H-1B registrants can log back into the system to finish verifying and authenticating the registration without, for example, having to wait for the attorney to delete and reenter the information if changes are required. This added functionality will also prevent issues with duplicate registrations when an attorney only deleted Form G-28 and not the registration.
2. Secondly, a warning box could be used to alert clients/employers/H-1B registrants that there are two parts to the verification process if the registrant is represented and using a passcode.
3. This dual protection will provide an easy way to address to many confusing and frustrating situations that arose in the FY2023 registration period.

- **Batch Registrations**

The user interface for batch registrations is difficult for attorneys and registrants who are submitting a large number of registrations in a batch. While AILA members appreciate the ability for data that was entered for a batch registration to be exported in CSV format, which can then be viewed in an Excel document, the inability to batch-upload the data in the first place frustrates the process.

AILA respectfully suggests creating a mechanism for data in a CSV, or similar format, to be uploaded to the user interface to create registrations.

- **Post-Data Input Issues/Editing Form G-28 after Petitioner has authenticated the form**

Once an employer/registant has authenticated Form G-28, there is no mechanism to edit the data in the form if a correction needs to be made. Instead, the entire registration needs to be deleted and redone.

AILA suggests creating a process that will enable attorneys/representatives to edit Form G-28 information after a client registrant has authenticated the form (without deleting the entire registration) and then require the employer/registant to re-authenticate it.

- **Post-Data Input Issues/Registration & Form G-28 Withdrawals**

When a registration is withdrawn by the employer/registant or attorney/representative after submission, there is no confirmation that the registration has been withdrawn. This was an issue for the FY2023 registration period because duplicate registrations were not visible to the attorney/representative after Form G-28 was withdrawn, making it impossible for an attorney/representative to verify whether the company registration was also withdrawn.

AILA respectfully suggests that this problem could be avoided by sending a confirmation email to both the attorney/representative and employer/registant when a registration is withdrawn notifying them that the registration has been withdrawn.

Similarly, when a Form G-28 is withdrawn, there is no confirmation that the form has been withdrawn.

AILA also requests that an email confirmation be sent to the attorney/representative when a Form G-28 is withdrawn notifying them that the form has been withdrawn.

- **Attorney Notification After Employer Confirms Registration and Form G-28**

With the anxiety involved with the H-1B registration period, AILA respectfully suggests an additional user interface feature that would send notification to attorneys/representatives when an employer/registant has completed Form G-28 and registration confirmation. In the current system, the attorney/representative must either rely on their client to let them know when they have completed their steps in the system, or frequently log onto their myUSCIS account to check to see if the registration is now available to submit and pay, indicating the employer has completed their part of the process. This would address a cumbersome and inefficient part of the handshake process.

- **Registration Fee Payment Confirmation**

There is no confirmation that the registration fee has cleared or been paid and the effect of an error in the fee payment is potentially devastating to both the employer and prospective H-1B beneficiary.

While AILA understands that the payment process is actually handled by the Department of Treasury through its *pay.gov* website, we would suggest the following actions that could be taken by USCIS to help users proactively address payment failures:

1. Send an email notification to the H-1B registrant and the attorney/representative, if applicable, once the payment has cleared, or in the alternative, add an extra column to the registration summary page noting “payment confirmed” when the payment has cleared;
2. Send an email notification to the H-1B registrant and the attorney/representative, if applicable, if the payment does not clear and provide the opportunity to provide a substitute payment method (i.e., credit card, debit card, ACH transfer, etc.); and
3. Provide a reasonable grace period, *e.g.*, 72 hours after notifications are sent, to cure payment issues, even if that occurs after the registration period has closed.

- **Process to Quickly Identify Selected Registrations**

AILA appreciates the timely manner with which USCIS has completed the H-1B Initial Electronic Registration Process since the program was initiated, and correspondingly notified registrants of their initial selection. However, identifying which specific beneficiaries were selected was cumbersome, as there was no means to sort 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 beneficiary registration number(s) in the email alerting the registrant of selection;
2. Provide a sorting functionality to allow registrants to group 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. Also, provide the functionality to sort by “date selected.”
4. In the alternative, if the data cannot be made to be sorted on the page, provide a function to export the results so that it could be sorted in Excel.

While the subsequent rounds of H-1B registration selections were quite welcome in prior years, there were challenges in identifying those cases selected in the subsequent rounds, as there was no means to distinguish them from those selected in the previous rounds. Moreover, members reported receiving several email notifications for a single new selection, which was only determined after manually searching through many registrations. Thus, including the registration number in the selection email would eliminate this confusion, as it could be easily determined whether it was in fact a duplicate email.

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

AILA understands that the employer is not obligated to file the H-1B petition on behalf of the selected beneficiary. However, it is not clear why a selected registration itself cannot be withdrawn. From a functional perspective, this could be achieved through a “withdraw” button next to the selection, with a dropdown space where the registrant can explain why it is being withdrawn. The benefit of withdrawing the registration would be two-fold:

1. It would provide advance notice of the number of H-1Bs that will be filed, allowing USCIS to make the best use of its resources. This would also enable USCIS to timely plan for a subsequent lottery, if necessary.
2. It would provide the petitioner with the opportunity to explain the reason for non-filing, relieving it of the burden of “retaining documentation to evidence the reason for non-filing if questioned” as required in the USCIS FAQs on “H-1B Electronic Registration Process.”

- **Post-Selection/Notifications**

H-1B petitioners and beneficiaries alike are understandably anxious about the H-1B selections. Many petitioners who receive emails that “action has been taken” on their accounts without any other context, are confused by, and concerned about, those emails. Any advance notice of what is to come next helps to lessen that anxiety. Accordingly, AILA respectfully requests that USCIS announce the date that selections will be made at least a day in advance so that clients may be prepared. Similarly, AILA requests that once USCIS determines the “cap” has been reached, an announcement be made before, or concurrently with, the time that non-selection notices are uploaded and emails are sent.

- **Post-Selection/Real-Time Reporting**

After the first round of selections is made, attorneys and H-1B petitioners and beneficiaries are in the dark as to whether there will be subsequent selection rounds. Any information that could be provided to help predict whether there might be additional rounds of selection would help H-1B petitioners and beneficiaries better plan for the future and might avoid unnecessary filings to keep beneficiaries in the U.S. until a ‘hoped-for’ additional round of selections is made.

Prior to the years when the cap was routinely reached on the initial first day or days when cap-subject H-1B petitions could be filed, USCIS would provide updates on the number of H-1B petitions counted toward the cap. This real time reporting assisted attorneys and H-1B petitioners gauge the likelihood of being able to file before the cap was actually reached. AILA suggests a similar reporting system could be instituted whereby USCIS’s announcement regarding the total number of petitions received is followed by weekly adjudication numbers, broken down by approval and denial/withdrawal, until an announcement is made that the cap has been reached. Attorneys, petitioners and beneficiaries could then make their own educated determinations as to the likelihood of an additional round of selections and their chances of selection.

## **Conclusion**

AILA appreciates USCIS's efforts to make its H-1B Electronic Registration System as easy to navigate as possible. While our list of suggestions may appear extensive, we do recognize the work that USCIS has done and believe the system overall works well and as intended. AILA deeply appreciates USCIS's willingness to consider the above suggestions for additional enhancements to the system. Please do not hesitate to contact AILA if we can be of further assistance (e.g., providing volunteers for testing system improvements and/or additional comments).