

June 1, 2023

The Honorable Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
301 7th Street SW  
Washington, DC 20528

[BY ELECTRONIC SUBMISSION]

Dear Secretary Mayorkas,

On behalf of the undersigned organizations, representing thousands of stakeholders across the United States, we request that the Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (“USCIS”) take immediate steps to address the procedural deficiencies that were highlighted in the Fiscal Year 2024 H-1B Visa registration and lottery process. To address the fact that demand for H-1B visas far exceeds supply, USCIS designed a registration and lottery system to establish an orderly and fair method for allocating the limited number of annual H-1B visas. However, this year’s H-1B registration and selection process exposed deficiencies in the current system that require immediate attention to preserve the integrity of the H-1B program.

On April 28, 2023, USCIS released data on the H-1B Cap filing season indicating that there was a 61 percent increase in the number of H-1B registrations submitted compared to the prior year. More importantly, the data revealed a 147% increase in the number of registrations that were for individuals who had multiple registrations. As reported in the Wall Street Journal, approximately 96,000 individuals were responsible for more than 408,000 registrations.<sup>1</sup> Although current regulations permit different employers to file registrations and petitions for the same individual, the significant increase raises concern.

The FY 24 H-1B registration data from USCIS makes clear that there are not enough H-1B visas authorized by Congress to meet U.S. employer demand; however, it also demonstrates a longstanding vulnerability in the current system that became all too evident this year. The fact that multiple registrations involving the same individual accounted for over 50 percent of all registrations, presumably to increase the probability of selection in the H-1B lottery, demonstrates that the current system can be unfairly gamed. It is also concerning because it could leave H-1B visas unused by allowing individuals to be counted more than once against a limited number of H-1B visas. The resulting harm is not just to the integrity of the system; it also economically harms the U.S. companies the H-1B program was designed to support, as well as thousands of foreign workers at risk of losing the ability to gainfully work and remain in the United States. Many F-1 nonimmigrants who are already employed by U.S. companies may be required to leave the United States if they are not selected in the H-1B lottery. This risk will only increase should the H-1B registration and lottery system stay the same.

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<sup>1</sup> See <https://www.wsj.com/articles/u-s-says-some-companies-cheat-h-1b-lottery-driving-record-applications-1a3e4fd>

Therefore, it is imperative that DHS and USCIS take immediate action to bolster the integrity of the H-1B program, protect U.S. companies and their workers, and reduce the potential for misuse before the next registration period in 2024. Urgent action is needed to address this potential for fraud and its negative economic impact. To that end, we submit the following recommendations to address the impact on this year's H-1B cap season, as well as to prevent future misuse of the registration process.

### ***Ensuring Full Utilization of the FY 24 H-1B Visas***

The undersigned organizations are appreciative of USCIS's efforts to streamline and modernize the H-1B lottery process by instituting the electronic registration process. We believe this system has the potential to save significant resources for both employers and USCIS. We also are thankful for USCIS's transparency into the FY24 H-1B registration data, as it reveals important information upon which we base our recommendations.

Given the 61 percent increase in total number of registrations received and the 147 percent increase in the number of registrations that were for individuals who had multiple registrations, the undersigned organizations are extremely concerned that H-1B visas could be counted multiple times per individual beneficiary. Even though individuals may have been selected more than once in the lottery and may even have more than one petition filed and approved on their behalf, they can only be issued one H-1B visa per Section 214(g) of the Immigration and Nationality Act. This is a problem given that USCIS has historically determined H-1B cap usage based on the number of petitions approved, rather than the number of visas actually *used*. To ensure maximum H-1B cap utilization we recommend the following:

1. In determining whether the annual numerical limitations have been reached, USCIS should only count a beneficiary once towards the numerical limitation, even if they have multiple registrations selected or multiple petitions approved.
2. As USCIS does with the H-2B visa cap, the agency should provide a regular and frequent "Cap Count" update on its website detailing the number of H-1B petitions it has received and the number it has approved during the petition filing period.<sup>2</sup> Given the lower H-1B selection rate this fiscal year, additional transparency would help employers, beneficiaries and their representatives make pragmatic decisions, including predicting the likelihood of a possible additional lottery selection or planning contingencies should employees lose their U.S. work authorization and be forced to depart the country.
3. USCIS should create a mechanism that allows selected registrants to withdraw their registration if they do not intend to file a petition, such as when the beneficiary has chosen to pursue employment with another employer and return those unused numbers to the fiscal year allocation.

We understand that USCIS must investigate potential fraud and abuse that has harmed the government, foreign workers, and employers. However, we request that DHS ensure due process in these federal enforcement investigations to ensure that scrupulous individuals and companies are not unfairly caught up in this effort or suffer unintended consequences.

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<sup>2</sup> See <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/cap-count-for-h-2b-nonimmigrants>.

### ***Ensuring Maximum Fairness and Transparency in the H-1B Registration in FY 25 and Beyond***

The undersigned organizations implore DHS to urgently and immediately implement regulatory changes proposed as part of the H-1B Modernization Rule that will “bolster the H-1B registration process to reduce the possibility of misuse and fraud in the H-1B registration system.”<sup>3</sup> These changes must take effect prior to the Fiscal Year 2025 H-1B filing season in March 2024 to deter any further detrimental impact.

To prevent individuals from gaming the H-1B registration process and ensure fairness in the program, we recommend that USCIS engage in rulemaking that would base lottery selections on the number of unique beneficiaries registered for selection (by passport number, for example) rather than the number of registrations filed. This change would give each beneficiary an equal chance in the lottery, regardless of whether they have 1 or 10 registrations submitted on their behalf. Implementing this modification would level the playing field for all beneficiaries, including those already employed by U.S. companies in another status, while closing loopholes that have allowed some individuals to game the system and providing increased agency to foreign workers to determine which job offers to pursue.<sup>4</sup>

Under this proposal, an employer will be required to submit a registration on behalf of a beneficiary based on a bona fide job offer, while continuing to allow beneficiaries to have multiple registrations filed on their behalf. However, when USCIS runs the lottery, it would now make selections from the list of unique beneficiaries, rather than the list of unique registrations. If a beneficiary with multiple registrations is selected, they would then choose which employment opportunity they want to pursue. In regulation, USCIS could allow only one petition per beneficiary to be filed at a time, which would reduce the risk of multiple filings and prevent unnecessary use of USCIS resources. USCIS could also establish a process by which if a petition is denied, other than due to fraud or misrepresentation, a selected beneficiary could pursue H-1B status through other employers that filed registrations on their behalf.

In the past two years, we have seen a significant increase in the number of H-1B registrations submitted. In FY 23, there were 483,927 registrations. This total increased more than 61 percent for FY 24, with more than 780,000 total registrations, and there was a 147 percent increase from FY 23 to FY 24 in the number of registrations that were for individuals that had multiple registrations filed on their behalf. While some of this increase is due to legitimate demand, it is inescapable that the numbers have been overinflated by workers and employers trying to have as many “bites at the apple” as possible.

Failure to address these problems before the FY 25 cap will cause significant economic harms. This year, due largely to the dramatic increase in submitted multiple registrations, the selection rates were significantly lower than in prior years—less than 15 percent of submitted registrations were selected to file an H-1B petition. This means that many legitimate business needs, and eligible beneficiaries have been left behind, negatively impacting economic growth at a time when unemployment rates are very low and labor demand is high. Waiting one more year to implement a new process to curb excess registrations would be detrimental to the overall economic growth of the United States and harm U.S. employers. We also believe that issuing a regulation is the best way to improve integrity in the H-1B registration process

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<sup>3</sup> See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1615-AC70>.

<sup>4</sup> According to the Wall Street Journal article cited above, “[t]he Biden administration says it has found evidence that several dozen small technology companies have colluded to increase the chances that their prospective foreign hires will win a [coveted H-1B visa for skilled foreign workers](#) in this year’s lottery.”

and is a more solution-driven proposal than increasing H-1B registration fees by more than 2,000% as USCIS has proposed in the USCIS Fee Rule (88 Fed. Reg. 402).

***DHS Must Work with Congress to Pass H-1B Reform***

Even if USCIS can implement these changes, with over 5 times as many individuals (both single and multiple registrants) seeking H-1B visas as there are available visas, it is evident that many U.S. employers with legitimate business needs are not able to meet their workforce needs through either the U.S. workforce or foreign workers. It is important to note that the one of the few ways for U.S. employers, who don't have operations overseas, to bring high-skilled foreign workers to the United States is through the H-1B visa. The current cap on H-1B visas of 65,000 and an additional 20,000 cap exemption for individuals with U.S. master's degrees or higher remains insufficient to meet the needs of our economy. DHS should work with Congress to ensure U.S. employers can leverage foreign talent to enable U.S. growth and innovation.

We appreciate your serious consideration of these recommendations and are available to address any questions or concerns that you may have.

Sincerely,

[American Immigration Council](#)

[American Immigration Lawyers Association](#)

[Compete America Coalition](#)

[Information Technology Industry Council \(ITI\)](#)

[TechNet](#)

CC: Ur Jaddou, USCIS Director  
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