

USCIS Releases Final H-1B Pre-Registration Rule – Impact for FY2020 H-1B Cap Filings

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On January 31, 2019, the US Department of Homeland Security (**DHS**) published the final H-1B cap registration rule requiring pre-registration by employers seeking to file H-1B petitions on behalf of applications subject to the H-1B cap, as well as modifying the manner in which H-1B petitions are selected for the H-1B cap and advanced degree exemption.

The H-1B nonimmigrant visa category is one of the most popular and allows employers to petition for highly educated foreign professionals to work in “specialty occupations” that require at least a bachelor’s degree or the equivalent. Over the past few decades, the H-1B has become integral to retaining foreign graduates of US colleges and universities, especially beneficiaries with degrees in science, technology, engineering, and mathematics (**STEM**), including subjects in the fields of chemistry, computer and information technology science, engineering, geosciences, life sciences, mathematical sciences, physics and astronomy, social sciences (anthropology, economics, psychology and sociology), and STEM education and learning research.

Electronic Registration Requirement

The new rule, which DHS says will result in better resource management and predictability for both US Citizenship and Immigration Services (**USCIS**) and petitioning H-1B employers, requires H-1B petitioners to complete a new registration process for each H-1B cap-subject petition the employer expects to file, a process that would take an estimated thirty (30) minutes to complete and may result in additional costs incurred by H-1B petitioners.

Pursuant to the new rule, before the H-1B cap petition filing period begins, USCIS would select the number of registrations predicted to exhaust all available visas. Employers would then file petitions only for the selected registrations.

Most importantly, please note that USCIS has suspended the electronic registration requirement for the upcoming U.S. fiscal year 2020 (FY2020) H-1B cap season to complete user testing of the registration system and to ensure the system and process are fully functional. Per the final regulation, DHS anticipates the registration requirement will be implemented starting with the FY2021 H-1B cap.

Allocation of H-1B Cap Numbers

The H-1B cap, created by the Immigration Act of 1990, is a numerical limit placed on the number of H-1B petitions that may be approved in any given fiscal year and allocates 65,000 available visas with an additional 20,000 slots available for those holding master’s degrees or higher from U.S. institution of higher learning.

Prior to the newly published H-1B rule, in years where the H-1B cap and the advanced degree exemption are both reached within the first five days in which H-1B cap petitions may be filed, the advanced degree exemption beneficiaries are selected before the H-1B cap beneficiaries. Under the new rule, USCIS will reverse the selection order and count all applicants towards the number projected as needed to reach the H-1B regular cap first. Once a sufficient number of applicants have been selected for the H-1B regular cap, USCIS would then select applicants towards the advanced degree exemption.

USCIS claims that this change will likely result in a significant increase of up to 16% (or 5,340 workers) in the number of beneficiaries with a master's or higher degree from a U.S. institution of higher education to be selected under the H-1B numerical allocations.

Please stay tuned for additional developments as they roll out prior to the April 1, 2019 filing day for FY2020 H-1B cap-subject nonimmigrant petitions.