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Practice Pointer

Frequently Asked Questions Regarding the New Electronic H-1B Registration & Filing Process¹ (Updated September 2020)²

On December 6, 2019, USCIS announced the implementation of a new requirement that employers seeking to file H-1B cap-subject petitions for fiscal year (FY) 2021, including those eligible for the advanced degree exemption, **must first electronically register and pay the associated \$10 H-1B registration fee** to determine if they may file an H-1B cap-subject petition, with formal notice of this change [published in the Federal Register](#) on January 9, 2020. USCIS and the Office of the CIS Ombudsman hosted several webinars on the H-1B registration process for registrants and attorneys/representatives to allow stakeholders the opportunity to familiarize themselves with the new process. Copies of the PowerPoint presentations from these webinars have been posted to the [USCIS Electronic Reading Room](#) and have also been posted to AILA's [FY2021 Cap-Subject H-1B Filing Season](#) Featured Issue page (AILA Doc. No. 19102407).

USCIS opened the initial electronic registration period from March 1 at noon (ET) through noon (ET) on March 20, 2020, for the FY 2021 H-1B cap season. 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 petition from April 1 through June 30, 2020. Receipt notices for H-1B petitions filed during this initial filing period were issued through early August.

Because an insufficient number of H-1B cap-subject petitions were filed during the initial 90-day filing period, on August 14, USCIS conducted an [additional round of selections](#) from registrations held in reserve. The newly selected registrations were issued a selection notices stating "August 2020 Selection of Reserve Registration" and indicating a filing period of August 17, 2020 to November 16, 2020.

The following practice pointer addresses some of members' most frequently asked questions regarding the electronic H-1B registration process based on information that is available to date. Please note that this document is based on information we knew as of **September 14, 2020**. Some of the advice provided here may change as more information is provided by USCIS and as members continue to work with the electronic registration tool. This practice pointer will be updated from time to time as more information becomes available.

¹ Special thanks to AILA members Lucy Cheung, David Wilks, Amy Erlbacher-Anderson, Susan Im, Ceridwen Koski, JJ Shepherd, and Michael Nowlan for their contributions to this practice pointer.

² The major updates made to this document since the previous version was released (February 19, 2020) are reflected in [blue](#) font.

Electronic Registration Process

1. On what website or platform will USCIS host the electronic H-1B registration process?

USCIS will use the [myUSCIS online portal](#) to conduct the electronic H-1B registration process. The myUSCIS online portal currently permits online filings of forms such as Form I-90, N-400, N-600, and I-130, among others.

USCIS will allow prospective petitioners to begin creating H-1B registrant accounts through the myUSCIS portal starting February 24 as “I am an H-1B registrant.” Please see slide 9 of the [PowerPoint presentation](#) from USCIS’s February 6 webinar.

Representatives may create a myUSCIS account at any time because representatives will use the same kind of account already available to representatives. For more information on how to create a myUSCIS account, please see this [step-by-step guide](#) provided by AILA’s Practice & Professionalism Center.

2. Do lawyers need to create a myUSCIS account for each client or can one register one account to manage and file applications for all clients?

One attorney or accredited representative can have an account and should be able to manage multiple clients under that account.

3. Can an attorney submitting registrations through their online account be signed into from multiple computers/IP addresses at the same time?

An attorney may be signed into their myUSCIS account from more than one computer; however, only one user can be designated per account.

4. Can multiple accounts be created under one lawyer’s name, in case of system malfunctions or an account getting locked out?

One account = one person and each myUSCIS account is tied to one specific email address.

5. What information is required for the electronic registration process?

The electronic registration form requests basic information about the prospective petitioning company or organization and employee, including the following:

REGISTRANT INFORMATION:

- Legal name of the prospective petitioning company or organization
- The Doing Business As name(s) of the prospective petitioning company or organization, if applicable

- Employer identification number (EIN) of the prospective petitioning company or organization
- Primary U.S. office address of the prospective petitioning company or organization
Legal name, title, and contact information (daytime phone number and email address) of the authorized signatory

BENEFICIARY INFORMATION:

- Beneficiary's legal name
- Beneficiary's gender
- Beneficiary's date of birth
- Whether consideration under the INA 214(g)(5)(C) advanced degree exemption is requested because the beneficiary has earned, or will earn prior to the filing of the petition, a master's or higher degree from a U.S. institution of higher education³
- Beneficiary's country of birth
- Beneficiary's country of citizenship
- Beneficiary's passport number

6. Will any information regarding the offered position need to be provided as part of the electronic H-1B registration process?

No information regarding the offered position has been required to be provided to USCIS as part of the electronic registration process, such as the job title or the minimum job requirements. Nevertheless, some members elected to evaluate the offered position and the credentials of the beneficiary in advance of submitting an electronic registration to ensure that the registration submitted is bona fide and non-frivolous.

7. Will an attestation be required as part of the electronic registration process?

Yes, at the time of submitting the electronic registration, the authorized signatory will be required to certify, under penalty of perjury, that they have reviewed the registration and that all of the information contained in the registration is complete, true and correct and that the authorized signatory, or the organization on whose behalf the registration is being submitted, intends to file an H-1B petition on behalf of the beneficiary named in the registration if the registration is selected. The authorized signatory is required to provide their electronic signature confirming they have read and agree to the statement by typing their full legal name into a box provided. In addition, the authorized signatory is required to confirm they can read and understand English and that they have read and understand every question and instruction on the registration. Please see slides 23 and 24 of the [PowerPoint presentation](#) from USCIS's February 6 webinar for more details.

³ Please note that USCIS indicated during its February 6, 2020 webinar that the registration system will be updated to reflect this question as currently written in this AILA practice pointer. The [PowerPoint presentation](#) provided by USCIS to stakeholders on February 6 erroneously lists the question as "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 advance degree exemption under INA 214(g)(5)(C)?" The USCIS [PowerPoint presentation](#) from February 11 reflects the corrected language on slide 28.

8. Will a Labor Condition Application (LCA) be required as part of the electronic registration process?

An LCA is not required to be completed prior to the electronic registration process. Some members, however, prepare and submit LCAs for beneficiaries in advance of the electronic registration process or shortly after the acceptance of the registration, as a certified LCA must be included with the H-1B petition filing. Members should strategize with clients whether or not to file LCAs for H-1B cap-subject beneficiaries *in advance* of the selection process in order to be able to more quickly file the H-1B petition upon selection versus *after* the registration is selected in order to maximize the time on the LCA.

In addition, even if no LCA is filed in advance of the selection process, members should consider conducting a wage analysis for the proffered position prior to submitting the electronic registration. Failure to consider whether the petitioner is paying the required wage could result in USCIS selecting a registration that ultimately cannot be filed. As discussed in Question 31 below, registrations that are selected but ultimately not filed could be flagged by USCIS for fraud.

9. May attorneys or law firms submit electronic registrations on behalf of clients?

Attorneys may submit registrations on behalf of clients provided they have a Form G-28 submitted for each client. The process for electronically submitting Form G-28 for purposes of this electronic registration process mirrors the process by which Form G-28s are currently submitted to USCIS for electronic filings through the [myUSCIS portal](#), such as for electronically filed Form I-90s. The method for submitting Form G-28 for the electronic registration process involves a two-factor authorization process. After the attorney completes the data entry process for the H-1B registration, a Form G-28 data may be entered. After the attorney prepares the registration and Form G-28 electronically, a one-time passcode will be generated. The passcode will be valid for 30 days. The attorney must share the one-time electronic passcode with the client who then must login to their myUSCIS account and select “Enter Representative Passcode” to review and accept the attorney’s Form G-28. After accepting the Form G-28, the client will be directed to review registration information and either accept or decline the registration.

If the registration is accepted, the registrant’s authorized signatory will provide their electronic signature by typing their full legal name into a designated box. After the registrant electronically confirms the registration and Form G-28 information, the attorney may pay the registration fee and submit the registration.

If the registration is rejected by the client (i.e. due to incorrect registration information), the attorney must go back into the registration page to resubmit the information before the client could go back into their account with the same representative passcode to confirm the registration again.

For more information regarding the Form G-28 process, please see the [PowerPoint presentation](#) from USCIS’s February 11 webinar. Please note that clients must have a myUSCIS account (account type: “I am an H-1B registrant”) in order to manage the G-28 process online.

10. On what date will the registration process open?

USCIS opened the initial registration period on March 1, 2020 at noon (ET).

11. How long does the initial registration filing window remain open?

The initial registration period opened on March 1 at noon (ET) and ran through noon (ET) on March 20. USCIS indicated that all registrations submitted during the initial registration period were included in the lottery regardless of whether a registration was submitted on March 1 or March 20, even if USCIS determines it has received more than enough registrations to meet the numerical limitations prior to this date. However, it is recommended not to wait until the last minute to submit a registration.

12. Is there an option to draft the registration earlier than the submission date for attorney or client review?

USCIS has indicated that both representatives and registrants must wait until March 1 to draft and submit H-1B registrations.

13. May I edit a registration *after* it has been submitted?

During the registration period, USCIS will permit users to review and edit the registrations of beneficiaries as many times as needed *before* the registration is submitted.

Once a registration has been submitted, USCIS will not permit a registration to be edited; however, USCIS will permit the registration of an individual beneficiary to be deleted, if needed, without impacting the registrations of other beneficiaries in the registration batch. Registrants can delete the registration of an individual beneficiary by clicking a “delete” button next to each beneficiary’s name. Please see a screenshot of this feature from the February 6 USCIS PowerPoint presentation (slide 29):

The screenshot displays two windows side-by-side. On the left is the 'COMPLETE REGISTRATION' page, which shows a summary of the registration status and a list of beneficiaries. A red arrow points to a yellow highlighted area where two beneficiaries have their 'Delete' buttons circled in red. On the right is an Excel spreadsheet titled 'TestCompany-h1b-registration-beneficiaries-01232020 - Excel'. The spreadsheet contains a table with columns for Company, Doing Bus, Submitted, Beneficiary, Beneficiar, and Status. It shows two rows of data: one for Sarah Brown (status: Submitted) and one for John Smith (status: Submitted). The 'Submitted' status is highlighted in yellow.

| A | B | C | D | E | F | G | H | I | J |
|----|--------------|-----------|-----------|-------|-------|------------|------------|-----------|---|
| 1 | Company | Doing Bus | Submitted | Sarah | Brown | Beneficiar | Beneficiar | Status | |
| 2 | Test Company | ##### | Submitted | Sarah | Brown | ##### | 80574636 | Submitted | |
| 3 | Test Company | ##### | Submitted | John | Smith | ##### | 24772536 | Submitted | |
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| 13 | | | | | | | | | |

14. Once we submit a registration, can you later add more beneficiaries if still within the initial registration period?

During the registration period, USCIS permits registrants to continue to submit registrations for additional beneficiaries as needed.

15. Is there a limit on the total number of beneficiaries that a prospective petitioner may register?

USCIS placed no limit on the total number of beneficiaries that a prospective petitioner may register for the H-1B visa lottery; but, each registration process can only accommodate up to 250 beneficiaries at a time. Additional beneficiaries can be added to subsequent registrations for the same petitioner.

16. If an employer submits multiple beneficiaries, let's say ten names, per registration, and later identifies that the employer needs to withdraw one of those ten names, does the system force the employer to withdraw all ten names that had been submitted in that registration, thereby requiring the employer to resubmit the nine names that it did not desire to withdraw from the registration system?

Upon submission of the registration and payment of the registration fee, a prospective petitioner will be able to see a list of all beneficiaries they have registered. Each beneficiary will be assigned a 19-digit confirmation number. Prospective petitioners have the option to delete a specific beneficiary from the registration, if needed, by clicking “delete” without impacting the other beneficiaries that the prospective petitioner has registered. Please see Questions 13 above. After a registration is submitted, USCIS will not refund the fee paid for a deleted beneficiary.

Registration Fee Payment

17. Is a registration fee required?

Yes. USCIS requires a \$10 non-refundable fee per beneficiary for each registration submitted.

18. What method will USCIS accept payment of the \$10 registration fee?

USCIS allows payment of the registration fee using the [Pay.gov portal](#). The registration system will permit payments to be made from a bank account (checking or savings), a credit card, or debit card. No Automated Clearing House (ACH) fee will be charged. The registration fee cannot be made using cash, a certified bank check, or money order. Employers do not need to create a pay.gov account to pay the fee, instead they provide basic payment details.

19. If an employer is registering multiple beneficiaries, can the employer pay for all of their registrations at one time?

Yes. The registration system allows for batch payments to pay the fee for up to 250 registrations submitted simultaneously. Corporate and payment information need only to be entered one time

for each batch of registrations. However, the corporate and payment information does not carry over between each subsequent batch of registrations.

20. Who can pay the \$10 registration fee (e.g. the employer, the legal representative)?
Will beneficiaries be allowed to pay the \$10 registration fee?

Registrants and Form G-28 representatives may pay the registration fee via the Pay.gov portal. In the registration fee final rule, it is noted that “the fee paid for the registration is a responsibility of the petitioning employer, not the foreign worker.”⁴

Registration Selection Process

21. When will USCIS run the H-1B lottery?

The lottery should be run no later than March 31. In the January 9, 2020 Federal Register notice, USCIS stated that it “intends to notify registrants with selected registrations from the initial registration period no later than March 31, 2020.”

22. How does USCIS notify attorneys and employers of selection in the lottery?

After the initial registration period closes, USCIS conducts the initial selection process. The account holder who submitted the selected registration receives a notification from USCIS via email or text message (depending on the preferred method of communication the account holder selects at the time of creating their myUSCIS account) stating that there is activity in their myUSCIS account and that they will need to log in to their myUSCIS account to see more details.

The account holder’s myUSCIS online account will show one of the four following statuses for each beneficiary registered:

Submitted: A registration status is “Submitted” after the initial selection process has been completed. “Submitted” registrations will remain in consideration for selection until the end of the fiscal year, at which point all registration statuses will be Selected, Not Selected or Denied.

Selected: Selected to file an FY 2021 H-1B cap-subject petition.

Not Selected: Not selected for this fiscal year.

- Please note that a registration will not reflect a status of “Not Selected” until the conclusion of the fiscal year. In the event that USCIS determines that it needs to increase the number of registrations projected to meet the H-1B regular cap or the advanced degree exemption allocation, USCIS will select from registrations held in reserve to meet the H-1B regular cap or advanced degree exemption allocation.

Denied: USCIS will indicate “Denied” in situations where the same registrant or representative submitted more than one registration on the beneficiary’s behalf for the same fiscal year. All

⁴ 84 FR 60307 (Nov. 8, 2019); *see also* 20 CFR 655.731(c)(9), (10) and (11), which indicates that H-1B attorney fees and filing fees are considered to be business expenses.

registrations the registrant or representative submitted on behalf of the same beneficiary for the same fiscal year will be deemed invalid.

USCIS indicated that it intends to notify registrants with selected registrations no later than March 31, 2020. Registrants and attorneys may select their preferred method of notification when setting up their myUSCIS account.

23. How will the wait list be implemented?

If USCIS receives more than enough registrations than needed to meet the regular H-1B cap and advanced degree exemption, all registrations that were **not** selected in the lottery will remain on reserve for the applicable fiscal year. A registration will not reflect a status of "Not Selected" until the conclusion of the fiscal year. In the event that USCIS determines that it needs to increase the number of registrations projected to meet the H-1B regular cap or the advanced degree exemption allocation, USCIS will select from registrations held in reserve to meet the H-1B regular cap or advanced degree exemption allocation, or re-open the registration period if additional registrations are needed to meet the new projected amount.

24. Will there be a notice provided to registrants who are on a "waitlist"?

Please see Question 22 above.

H-1B Petition Filing Issues

25. When will selected registrants be able to begin filing petitions?

Registrations selected in the initial round of selections had a 90-day filing window from April 1 to June 30, 2020 to file the H-1B cap-subject petition.

For registrations selected in the second round of selections conducted in August 2020, these newly selected registrations have been issued selection notices indicating a filing period of 8/17/2020 – 11/16/2020. See [Practice Alert: USCIS Selects Additional Registrations for the FY2021 H-1B Cap \(AILA Doc. No. 20081436\)](#).

26. At the time of filing the H-1B petition with USCIS, how will selected registrants indicate to USCIS that they have been selected in the H-1B lottery?

For registrants who have been selected, USCIS provides a "selection notice" made available in the account holder's myUSCIS account. The selection notice will identify the 90-day filing window and designate the Service Center where the petitioner must file the H-1B petition. The petitioner must include a copy of the selection notice with the H-1B filing.

If typographical errors were made during the registration process, those will be reflected on the selection notice. Typographical errors are not fatal to an H-1B petition so long as the petitioner can demonstrate through other matching information (e.g. passport number, country of citizenship) that the beneficiary listed on the Form I-129 is, in fact, the individual listed on the selection notice.

27. How is the selection of the registration indicated on the Form I-129?

The 01/08/20 edition of Form I-129 contains a new question on the H Classification Supplement form requesting information about the beneficiary's confirmation number from the H-1B registration selection notice. Please see a screen shot of the new question on both new editions provided below:

5. If you selected **a.** or **d.** in Item Number 4., and are filing an H-1B cap petition (including a petition under the U.S. advanced degree exemption), provide the Beneficiary Confirmation Number from the H-1B Registration Selection Notice for the beneficiary named in this petition (if applicable).

Please note that in light of the final USCIS Fee Rule, effective October 2, 2020, USCIS will be adopting a new Form I-129 H1, as well as increasing the filing fees associated with H-1B petitions. Please see AILA's [Featured Issue Page: Changes to USCIS Fee Schedule](#) (AILA Doc. No. 20073101) for more information.

Although USCIS has indicated that it will post the new and revised forms online 30 days before the new rule goes into effect, as of September 14, the new I-129 forms have not yet been posted to the USCIS website. AILA has contacted USCIS about the new forms and will update the AILA membership as soon as more information becomes available.

28. Once a registration has been selected, how long will the petitioner have to submit a complete H-1B petition to USCIS?

Petitioners will have at least 90 days from the date of a registration selection to submit a complete H-1B petition to USCIS. USCIS will indicate in the selection notice the 90-day filing window and designate the Service Center where the petitioner must file the H-1B petition. Petitions will be adjudicated in the order in which they are received. Note: USCIS will select enough registrations necessary to meet the applicable numerical limitations; therefore, as long as a petition is properly filed during the petition filing window it will be adjudicated.

As noted in Question 25 above, registrations selected in the initial round of selections had a 90-day filing window from April 1 to June 30, 2020 to file the H-1B cap-subject petition. For registrations selected in the second round of selections conducted in August, these newly selected registrations have been issued selection notices indicating a filing period of 8/17/2020 – 11/16/2020. See [Practice Alert: USCIS Selects Additional Registrations for the FY2021 H-1B Cap](#) (AILA Doc. No. 20081436).

29. What are some of the key issues that I should keep in mind when preparing my H-1B cap-subject petition?

Please note that USCIS requires that the Form I-129 indicate a start date of October 1, 2020, otherwise the H-1B cap-subject petition will be rejected or denied. This requirement holds true for H-1B cap-subject petitions submitted during the initial 90 filing period from April 1, 2020 to

June 30, 2020, as well as H-1B cap-subject petitions submitted within the second filing period from August 17, 2020 to November 16, 2020.

Please also note that the [final USCIS fee rule](#) will go into effect on October 2, 2020. In addition to an increase in filing fees, a new Form I-129 H1 will be required. Although USCIS has indicated that it will post the new and revised forms online 30 days before the new rule goes into effect, as of September 14, the new I-129 forms have not yet been posted to the USCIS website. AILA has contacted USCIS about the new forms and will update the AILA membership as soon as more information becomes available.

30. Will petitioners be able to premium process H-1B cap subject petitions?

For the FY2021 H-1B cap filing season, USCIS [announced](#) a temporary suspension of the premium processing service on March 16, 2020. Subsequently, on May 29, 2020, USCIS [announced](#) a resumption of premium processing for all H-1B cap-subject petitions, effective June 22, 2020.

31. May I submit a pre-paid mailer to USCIS with my FY 2021 cap-subject H-1B petition for faster mailing of the H-1B approval notice?

For the FY 2021 cap season, USCIS [announced](#) that USCIS will **not** use pre-paid mailers to send any communication or final notices for FY 2021 cap-subject petitions. USCIS will use first-class mail to mail cap-subject H-1B petition approval notices.

32. The regulations seem to indicate that cases that are not filed will be flagged for fraud, but is there a mechanism to deal with situation where cases aren't filed for legitimate reasons?

DHS has not indicated the exact process through which fraudulent cases will be addressed or any method of redress. However, in the preamble to the H-1B registration final rule, DHS notes that cases that demonstrate a pattern and practice of potential abuse of the registration system will involve a case-by-case review of the facts involved, including any mitigating facts or circumstance. It further notes that registrants that have been found to engage in a pattern and practice of submitting registrations for which they do not file a petition following selection could be subject to monetary fines or criminal penalties pursuant to 18 U.S.C. 1001(a)(3) for making false statements and misrepresentations to the government.

33. If a registrant is selected and has a bona fide reason for a delay in filing past the 90 days, what mechanism can be used to communicate the reasons for the delay?

The preamble to the H-1B registration final rule indicates that “After … selection, petitioners will be notified by USCIS of the exact amount of time allowed for filing the petition, which will in all cases be at least 90 days, but may be longer at the discretion of USCIS.”⁵

⁵ 84 Fed. Reg. 888 (Jan. 31, 2019) at page 910.

As of the date of this practice pointer, the USCIS had not announced a formal mechanism for submitting a petition beyond the 90 day filing period. USCIS has not officially indicated that it will consider *nunc pro tunc* requests along with a late petition filing.

34. If a company has multiple entities (e.g., subsidiary, affiliate, and parent), can each entity submit a registration if they have a Federal Employer Identification Number (FEIN)?

The answer to this question is the same for a normal paper form H-1B and online registration. As long as there is a legitimate business need for each petition/petitioner and there are two real and separate job opportunities, then each entity can submit a registration for the same beneficiary. Each petitioner must be able to establish the legitimate business need. If not, the petitioner will risk having the approvals for all the cap-subject petitions filed by “related entities” for the same beneficiary denied or revoked.⁶

In response to a stakeholder question, USCIS indicated that an organization with multiple entities/employers may have a one person act as the authorized signatory for multiple entities/employers, but a unique email address and a separate myUSCIS account is required for each entity/employer.

35. Will there be a paper filing registration option or is this H-1B registration lottery process exclusively online?

No, registrations must be submitted electronically. Paper filed registrations will not be accepted through the postal service or otherwise.

H-1B Registrations Selected in the Second Round of Selections in August 2020

36. As USCIS reopened the H-1B registration process in August, how are employers and employers notified of their selections for this second round of H-1B lottery process?

On August 14, USCIS conducted an additional round of selections from registrations held in reserve. As with the initial selection process, both the employer and the attorney received an email or a text message (depending on the preferred method of communication the account holder selected at the time of creating their MyUSCIS account) from USCIS indicating that the registration had been updated. It is necessary to log into myUSCIS and scroll through the cases to determine which have been updated from “submitted” to “selected”. Members report receiving more notification emails than having new cases selected for processing for this second round of H-1B registration selection.

Registrations that were selected in this additional round of selections have been issued selection notices stating “August 2020 Selection of Reserve Registration” and indicating a filing period of August 17, 2020 to November 16, 2020. For more information, please see Practice Alert: USCIS Selects Additional Registrations for the FY2021 H-1B Cap (AILA Doc. No. 20081436).

⁶ See PM-602-0169 by USCIS posted on March 23, 2018 relating to 8 CFR 214.2(h)(2)(i)(G) addressing the adopted AAO decision in *Matter of S-Inc.*

37. My client was selected as part of the August 2020 Selection of Reserve Registrations. What steps do I need to take / what should I keep in mind when submitting the H-1B petition?

First, you need to access the selection notice associated with the case, which will identify the 90-day filing window and designate the Service Center where the petitioner must file the H-1B petition. The petitioner must include a copy of the selection notice with the H-1B filing. From that point forward, the filing process is no different than any H-1B cap-subject filing submitted in the past -- an LCA must be prepared, posted, filed and certified and petition forms and supplements prepared.

Please note that USCIS requires that the Form I-129 indicate a start date of October 1, 2020, otherwise the H-1B cap-subject petition will be rejected or denied. This requirement holds true for H-1B cap-subject petitions submitted during the initial 90 filing period from April 1, 2020 to June 30, 2020, as well as H-1B cap-subject petitions submitted within the second filing period from August 17, 2020 to November 16, 2020.

Please also note that the final USCIS fee rule will go into effect on October 2, 2020. In addition to an increase in filing fees, a new Form I-129 H1 will be required. Although USCIS has indicated that it will post the new and revised forms online 30 days before the new rule goes into effect, as of September 14, the new I-129 forms have not yet been posted to the USCIS website. AILA has contacted USCIS about the new forms and will update the AILA membership as soon as more information regarding the new forms becomes available.

38. My client's registration was selected as part of the August 2020 additional round of selections however my client no longer needs an H-1B visa. Can I withdraw the registration?

As discussed in AILA's Practice Alert: H-1B Registration Selected in the FY2021 H-1B Visa Lottery But Not Filing an H-1B Petition: What's Next?, AILA Doc. No. 20060834, 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. AILA is aware that some attorneys have taken a more proactive approach and elected to submit a letter to USCIS for every H-1B registration that was not used. However, there is nothing on the USCIS website or the regulations that indicates that this approach is necessary. There is, to date, no way to formally request USCIS to reassign such a visa number to another H-1B registrant.

Presidential Proclamation 10052

39. My H-1B client left the United States and was not here in the U.S. on June 24, 2020 - is he/she still eligible to apply for an H-1B cap-subject petition in light of the presidential proclamations? What factors should I take into consideration when filing an H-1B petition for such an individual?

Presidential Proclamation 10052, which took effect on June 24, 2020, does not preclude an employer from filing an eligible H-1B cap-subject petition for a beneficiary who is outside the United States. It precludes a beneficiary with an approved cap-subject H-1B petition from acquiring an H-1B visa at this time at a U.S. Consulate or Embassy abroad if the beneficiary is not eligible for a National Interest Exception. The filing process for these beneficiaries remain the same. However, employers should understand that even with an approved cap-subject H-1B petition, a beneficiary may not be able to enter the U.S. or be issued an H-1B visa until after January 1, 2021, according to Presidential Proclamation 10052.

For more information and resources regarding the Presidential Proclamations, please see [AILA's Resources Related to Presidential Proclamations Temporarily Suspending Entry of Certain Immigrants and Nonimmigrants into the United States](#), AILA Doc. No. 20042111.

F-1 Student Issues

40. What effect will the H-1B cap registration process have on H-1B petitions for beneficiaries who are seeking cap-gap protection?

H-1B cap-gap benefits only attach upon filing the H-1B cap petition, not upon filing the H-1B electronic registration. Therefore, only those individuals selected through the H-1B registration process and who have an H-1B cap petition requesting an October 1 start date timely-filed on their behalf will have their duration of status, and any applicable employment authorization, automatically extended until October 1, unless the petition has been rejected, denied, revoked or withdrawn prior to that date.

For those registrations selected in the second round of selections in August 2020, it is advisable to file the H-1B petition as early as possible while the F-1 student beneficiary remains eligible for cap-gap relief (i.e., OPT/STEM OPT is still valid on the date of the H-1B filing or within the 60-day grace period on the date of H-1B filing). Similar to previous H-1B cap seasons, an F-1 student must stop working on October 1 if the H-1B cap-subject petition has yet to be adjudicated.

Degree Issues

41. Is a beneficiary required to have completed the qualifying degree requirement at the time of electronic registration or at the time of filing the H-1B petition?

The degree must be obtained by the time of filing the H-1B petition. The degree does not need to be obtained by the time of electronic registration. USCIS states multiple times in the preamble to the H-1B registration final rule that establishing eligibility is not a requirement for registration and that it is simply an “antecedent procedural requirement to properly file the petition.”⁷ This would also be consistent with 8 CFR 103.2(b)(1) which requires that eligibility must be established at the time of filing the benefit request.

Importantly, the question in the H-1B registration tool regarding the H-1B master’s cap exemption to reads “Are you requesting consideration under the INA 214(g)(5)(C) advanced degree

⁷ See 84 Fed. Reg. 888 (Jan. 31, 2019) at page 900, 903, 907.

exemption because the beneficiary has earned, *or will earn prior to the filing of the petition*, a master's or higher degree from a U.S. institution of higher education" (emphasis added).

42. Can a registration be changed to the regular cap if the beneficiary has not yet graduated with the necessary degree?

There is currently no mechanism in the registration system to show whether a selection is made under the regular cap or the advanced degree exemption under INA section 214(g)(5)(C). On USCIS website regarding the [H-1B Electronic Registration Process](#), USCIS notes that: "If the beneficiary is selected under the advance degree cap and has not earned a qualifying master's or higher degree from a U.S. institution of higher education at the time the petition is filed, the petition will be denied or rejected."

Specifically, USCIS addresses this fact pattern in its Q&A section as follows:

Q. If you are registering for the master's cap based on the expectation that the beneficiary will earn a qualifying advanced degree, and you are actually selected under the master's cap, but, the beneficiary does not obtain their qualifying advanced degree, is there a risk that the cap-subject H-1B petition for that beneficiary will be denied?

A: If a registration is submitted requesting consideration under the INA 214(g)(5)(C) advanced degree exemption because the beneficiary has earned, or will earn prior to the filing of the petition, a master's or higher degree from a U.S. institution of higher education, and the registration is selected under the advanced degree exemption, the beneficiary must be eligible for the advanced degree exemption at the time of filing the I-129 petition. If the beneficiary is selected under the advance degree cap and has not earned a qualifying master's or higher degree from a U.S. institution of higher education at the time the petition is filed, the petition will be denied or rejected.

Technical Issues

43. If we encounter technical issues with completing and submitting the registration form online, who can we contact to address the issue?

USCIS allows stakeholders encountering technical issues during the H-1B registration process to call the USCIS Contact Center at 1-800-375-5283 for assistance only. No separate phone line for the H-1B registration process was setup.

38. In the event of an unexpected technical problem, could the registration process be suspended for an H-1B cap-filing season?

USCIS indicated during its webinars that if there are technical issues that prevent electronic submission of registrations, USCIS will notify the public of the issue via the USCIS website and provide guidance pertaining to filing applications thereafter.