



August 16, 2019

Kenneth Cuccinelli
Acting Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

Re: USCIS decision on electronic registration for the fiscal year (FY) 2021 H-1B cap filing season and stakeholder engagement for the H-1B registration tool

Dear Acting Director Cuccinelli:

On behalf of the undersigned organizations representing a broad cross-section of U.S. employers, immigration practitioners, higher education institutions, and the general employment-based immigration community who have concerns about the H-1B registration process, we are writing with two requests:

1. *USCIS to confirm by September 15, 2019 whether it intends to mandate use of the electronic registration system for the FY2021 H-1B cap filing season that begins on April 1, 2020.*
2. *USCIS to solicit additional participation and feedback from a wide range of interested stakeholders before the electronic registration system is operationalized.*

BACKGROUND

On January 31, 2019, the U.S. Department of Homeland Security (“DHS”) issued a final rule amending its H-1B regulations¹, which, in relevant part, requires petitioners seeking to file H-1B petitions on behalf of cap-subject H-1B workers, including those eligible for the advanced degree exemption, to first electronically register with the U.S. Citizenship and Immigration Services (“USCIS”) during a designated registration period, unless the registration requirement is temporarily suspended. When registration is required, only those petitioners whose registrations are selected will be eligible to file an H-1B cap-subject petition. Although the rule took effect on April 1, 2019, USCIS suspended the electronic registration requirement for the FY2020 H-1B cap filing season “to complete all requisite user testing of the new H-1B registration system and otherwise ensure the system and process are operable.”²

USCIS SHOULD ANNOUNCE BY SEPTEMBER WHETHER IT INTENDS TO MANDATE USE OF THE REGISTRATION SYSTEM FOR FY2021 H-1B CAP SEASON

USCIS indicated that the electronic registration requirement, once implemented, will create a more efficient and cost-effective H-1B cap petition process for USCIS and employers by allowing petitioners to forego the time and expense of preparing and filing a full H-1B petition, with all supporting documentation, unless USCIS selects the petitioner’s registration. USCIS estimated that unselected petitioners would realize a net cost savings of \$47.3 million to \$75.5 million dollars, depending on the variable costs and expenses associated with the H-1B filing process incurred by petitioners.³

These savings will not be forthcoming without a prompt announcement from USCIS confirming there will indeed be an electronic registration obligation for H-1B cap-subject petitions filed in April 2020 (for FY2021). The predicate of such savings for U.S. employers under the final rule is that little or no work on any underlying H-1B petition would need to be pursued until selected registrations are identified by USCIS. Yet, employers begin making operational decisions and identifying intended H-1B employees many months in advance of the H-1B cap filing window.

In an informal survey conducted in July 2019 by the Society for Human Resource Management (SHRM), SHRM members report that in a typical year, they begin their H-1B cap filing process as early as August, and no later than January, depending on the industry. Similarly, based on an informal survey conducted by the American Immigration Lawyers Association (AILA) of a subsection of its members, in a typical year, most immigration attorneys who were surveyed reported being retained by employers to commence preparations for the H-1B cap filing season no later than January and as early as August.

¹ Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens, 84 FR 888 (Jan. 31, 2019).

² *Id.* at page 888.

³ *Id.* at page 890.

USCIS SHOULD SOLICIT ADDITIONAL PARTICIPATION AND FEEDBACK ON THE H-1B REGISTRATION TOOL FROM A WIDE RANGE OF STAKEHOLDERS

While we welcome the agency's efforts to modernize filing processes and improve efficiencies to better manage the H-1B lottery, transitioning to a new electronic system has the potential for technical glitches and operational disruptions. We urge USCIS to engage in extensive beta testing of the system, with maximum participation and feedback from a wide range of interested stakeholders, before the system is required for use to ensure a smooth transition to the new electronic registration system and minimize the risk of disruptions. Meaningful consideration of stakeholder recommendations and engagement in system testing is necessary to ensure that the registration system works as intended. In fact, USCIS indicated in its final rule that it would engage in stakeholder outreach and provide training to the regulated public on the registration system in advance of its implementation.⁴

To that end, U.S. employers, immigration practitioners, higher education institutions, and the general employment-based immigration community should have the opportunity to participate in the testing and vetting process as they will be the front-end users of the system and are best positioned to identify technical issues that might not be evident on the back end during the development of the electronic registration system. Furthermore, to ensure thorough knowledge of the new system, U.S. employers, immigration practitioners, higher education institutions, and the general employment-based immigration community should be given the opportunity to view the electronic registration portal, and familiarize themselves with it, well in advance of any mandatory registration period. Extensive beta testing and demonstrations with end users contributed to the successful rollout of electronic filings, such as the Labor Condition Application (LCA) and ETA Form 9089 Application for Permanent Employment Certification.

Although USCIS has conducted some limited outreach, such engagement was not widely available, nor was it specifically publicized as an opportunity to provide feedback on the H-1B registration tool.⁵ As such, USCIS should conduct further outreach and solicit additional feedback from a wide range of interested stakeholders before the electronic registration system is operationalized. The undersigned stand ready to participate and provide feedback to USCIS to ensure that the electronic registration system is completely functional and thoroughly tested before USCIS mandates its use. Without participation from a wide-range of interested stakeholders, there is the potential for significant disruptions to U.S. employers that utilize the H-1B program to meet their workforce needs, jeopardizing the ability of American companies to acquire the talent they need to innovate, expand their operations, create jobs, and compete in the global economy.

CONCLUSION

While we commend USCIS's stated intent to institute a process that will increase government efficiency and lower overall costs for U.S. employers, two agency actions are necessary in order to ensure the registration process does so. The agency should publicly confirm by September 15,

⁴ *Id.* at page 893.

⁵ USCIS has sent out a series of invitations to stakeholders relating to the USCIS "digital experience" (e.g., "Improve the USCIS Digital Experience Filing H-1B Petitions" on March 28, 2019, and "Help Shape the EB-5 Digital Experience" on May 30, 2019).

2019 *if, and when*, the electronic registration system will be rolled out for the FY2021 H-1B cap filing season. And, USCIS should allow for maximum stakeholder participation and feedback as soon as possible on the technical functioning of the electronic registration tool to ensure that the system is completely functional and thoroughly tested before USCIS mandates its use.

We thank you for your consideration and look forward to hearing from you at your earliest convenience. Please contact Sharvari (Shev) Dalal-Dheini at (202) 507-7621 or by email at sdalal-dheini@aila.org, or Diane Rish at (202) 507-7642 or by email at drish@aila.org to discuss next steps.

Sincerely,

American Council on Education (ACE)
American Immigration Lawyers Association (AILA)
Association of American Universities (AAU)
Association of Public & Land-Grant Universities (APLU)
BSA | The Software Alliance
College and University Professional Association for Human Resources (CUPA-HR)
Compete America Coalition
CompTIA
FWD.us
HR Policy Association
Information Technology Industry Council (ITI)
Presidents' Alliance on Higher Education and Immigration
Semiconductor Industry Association (SIA)
TechNet
U.S. Chamber of Commerce

cc: Mark Koumans, Deputy Director, USCIS
Lora Ries, Chief of Staff, USCIS
Donald Neufeld, Associate Director of Service Center Operations
Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, USCIS
Kathryn Rexrode, Associate Director, External Affairs Directorate, USCIS
Julie Kirchner, Ombudsman, Office of the Citizenship and Immigration Services Ombudsman
Stacy Shore, Acting Deputy Ombudsman, Office of the Citizenship and Immigration Services Ombudsman
Elissa McGovern, Chief of Policy, Office of the Citizenship and Immigration Services Ombudsman