

The H-1B Process Springs Forward: Changes to the Upcoming H-1B Registration, Petition, and Fee Schedule

Matthew C. Luzadder

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As the birds begin chirping and the flowers get ready to bloom, it can only mean that the H-1B cap season is quickly approaching. Prospective H-1B candidates and employers prepare for a coveted “lottery” win, vying for one of 65,000 spots (with the chance at an additional 20,000 spots if the beneficiary holds an advanced degree). Once selected, the U.S. Citizenship and Immigration Services (USCIS) invites “winners” to apply for an H-1B visa after the registration period closes. This year, the registration period for the FY25 lottery commences at noon EST Wednesday, March 6, 2024 and continues through noon EST on Friday, March 22, 2024. Selected registrations will be notified after March 22, and invited to apply for the H-1B visa through a form I-129 Petition for a Nonimmigrant Worker. On January 30, 2024, USCIS issued a [final rule](#) establishing a slew of changes to the H-1B process. Recent changes include increased fees, a new registration selection process, start-date flexibility, a new form I-129, and integrity and anti-fraud measures. These updates aim to modernize the H-1B selection process to be more equitable and beneficiary-centered.

Enhanced Registration and a More Equitable Selection Process

On Feb. 28, 2024, USCIS launched new online organizational accounts that will allow multiple people within a company and their legal representatives to collaborate and prepare H-1B registrations, H-1B petitions, and associated requests for premium processing. The organizational accounts significantly enhance H-1B processes by enabling users to share draft filings among attorneys, attorney staff, and company representatives, and submit filings directly to USCIS. Importantly, a new organizational account is required to participate in the [H-1B Electronic Registration Process](#) starting in March 2024.

FY24 saw a record-breaking number of 758,994 eligible registrants. The true number of registrations was much higher, as over 400,000 registrants submitted multiple eligible entries. Up until now, USCIS selected lottery winners by registration, meaning that beneficiaries with multiple registrations submitted on their behalf got more bites out of the proverbial apple. Starting this spring with FY25 registrations, USCIS will select registrations by unique beneficiary, meaning that regardless of the number of registrations submitted – each beneficiary gets just one bite out of the apple. Multiple employers can still submit requests for the same beneficiary, but the Department of Homeland Security (DHS) anticipates that selecting by unique beneficiary will reduce the chances of gaming the system.

New Integrity and Anti-Fraud Measures

This year and beyond, the registration process requires that registrations include the beneficiary's valid passport or travel document number while prohibiting a beneficiary from registering under more than one passport or travel document. *See* 8 CFR § 214.2(h)(8)(iii)(A). In order to further combat fraud, DHS is incorporating into code USCIS' authority to deny H-1B petitions or revoke approved petitions for certain reasons, including where:

- there is a mismatch or change in the beneficiary's identifying information between the registration and actual petition;
- the registration contained a false or invalid attestation,
- the registration fee was invalid; or
- the H-1B cap petition was not based on a valid registration.

See 8 CFR § 214.2(h)(8)(iii)(A) and (D). Even more, USCIS can deny an H-1B petition or revoke an approved petition in cases where inaccurate, invalid, fraudulent or misrepresented statements on the H-1B petition, labor condition application (LCA), or temporary labor certification (TLC) are determined to be false. *See* 8 CFR § 214.2(h)(10) and (11). These safeguards and expanded grounds for petition denial or revocation underscore the importance for companies to retain qualified attorneys who will ensure compliance with H-1B process rules.

A New Form I-129, Petition for Nonimmigrant Worker

Once, and if, a beneficiary receives the thrilling news that their H-1B registration has been selected, they are able to choose which employer can file form I-129 Petition for a Nonimmigrant Worker on their behalf, if they have multiple offers of employment. In April 2024, USCIS will release a new edition of the form I-129. A [preview](#) is available on their website. Applications postmarked on or after April 1, 2024 must be in the new edition. Employers or their representatives can also file the form I-129 through USCIS' online portal starting on April 1, 2024. Paper filed forms will no longer be accepted at USCIS service centers and must be filed instead at lockbox addresses, which will be posted to USCIS' website ([here](#)) late March 2024. Applications that do not include the proper fees, incorporating the recent fee schedule changes, will be rejected.

New and Increased Fees

Speaking of fees, for the first time since 2016, DHS issued a separate [final rule](#) on January 31, 2024 adjusting certain immigration and naturalization benefit request fees, some of which affect the H-1B registration and petition process. First, USCIS announced a new "Asylum Program Fee" that will be charged to employers filing an I-129 Petition for Nonimmigrant Worker (as well as an I-140 Immigrant Petition for Alien Worker), effective April 1, 2024. The Asylum Program Fee will be \$600 for employers with 26 or more full time employees (FTE), \$300 for employers with 25 or fewer FTEs, and \$0 for nonprofits. The Asylum Program Fee will join the [existing statutory fees](#) for employers filing I-129 petitions on behalf of prospective H-1B employees. Second, also effective April 1, 2024, in addition to the Asylum Program Fee, the filing fee for the I-129 petition itself will increase by 70%, from \$460 to \$780. Finally, effective March 2025 for the FY26 cap season and beyond, the H-1B registration fee is increasing from \$10 to \$215 per registration, a 2050% increase. Luckily, the registration fee remains \$10 through this H-1B cap season.

Flexible H-1B Employment Start Dates

Starting this year, certain H-1B cap subject petitions will be allowed to select start dates within the relevant fiscal year that are after October 1. The added flexibility enables H-1B beneficiaries to choose more relevant start dates. The start date flexibility is particularly beneficial in circumstances where there are multiple selection rounds pushing the petition filing window past October 1, or where an employee is in the United States with legal status valid beyond October 1. However, other restrictions on the petition start date remain such as the requirement that the petition may not be filed sooner than 6 months before the start date. For a start date of October 1, the earliest a petition may be filed is April.

Takeaways

The upcoming FY25 H-1B cap season brings significant changes that employers and prospective H-1B beneficiaries need to be aware of. The new registration selection process by unique beneficiary aims to create a more equitable system, while increased fees like the new Asylum Program Fee add to the overall costs for employers. Start date flexibility and selection by unique beneficiary provide some welcomed improvements. However, the enhanced integrity measures and grounds for denial underscore the importance of ensuring full compliance and accuracy throughout the entire H-1B registration and petition process. As we enter the cap season and transition to the new process, employers would be wise to work closely with experienced immigration counsel to successfully navigate the complexities of the H-1B process.