

Homeland Security Announces Final Rule For H-1B Visa Program

By Administrator

Wednesday, 30 January 2019 10:41 -

WASHINGTON—The Department of Homeland Security (DHS) posted today for public inspection, a final rule amending regulations governing H-1B cap-subject petitions, including those that may be eligible for the advanced degree exemption. The final rule reverses the order by which U.S. Citizenship and Immigration Services (USCIS) selects H-1B petitions under the H-1B regular cap and the advanced degree exemption, and it introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions. The rule will be published in the Federal Register on Jan. 31, and will go into effect on April 1, though the electronic registration requirement will be suspended for the fiscal year (FY) 2020 cap season.

“These simple and smart changes are a positive benefit for employers, the foreign workers they seek to employ, and the agency’s adjudicators, helping the H-1B visa program work better,” said USCIS Director L. Francis Cissna. “The new registration system, once implemented, will lower overall costs for employers and increase government efficiency. We are also furthering President Trump’s goal of improving our immigration system by making a simple adjustment to the H-1B cap selection process. As a result, U.S. employers seeking to employ foreign workers with a U.S. master’s or higher degree will have a greater chance of selection in the H-1B lottery in years of excess demand for new H-1B visas.”

Effective April 1, USCIS will first select H-1B petitions (or registrations, once the registration requirement is implemented) submitted on behalf of all beneficiaries, including those that may be eligible for the advanced degree exemption. USCIS will then select from the remaining eligible petitions, a number projected to reach the advanced degree exemption. Changing the order in which USCIS counts these allocations will likely increase the number of petitions for 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. Specifically, the change will result in an estimated increase of up to 16% (or 5,340 workers) in the number of selected petitions for H-1B beneficiaries with a master’s degree or higher from a U.S. institution of higher education.

USCIS will begin accepting H-1B cap petitions for FY 2020 on April 1, 2019. The reverse selection order will apply to petitions filed for the FY 2020 H-1B cap season. Petitioners may file an H-1B petition no more than six months before the employment start date requested for the beneficiary. USCIS will provide H-1B cap filing instruction on uscis.gov in advance of the filing season.

Importantly, after considering public feedback, USCIS will be suspending the electronic registration requirement for the FY 2020 cap season to complete user testing and ensure the system and process are fully functional. Once implemented, the electronic registration requirement will require petitioners seeking to file H-1B cap petitions, including those that may be eligible for the advanced degree exemption, to first electronically register with USCIS during a designated registration period. Only those whose registrations are selected will be eligible to

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file an H-1B cap-subject petition. USCIS expects that the electronic registration requirement, once implemented, will reduce overall costs for petitioners and create a more efficient and cost-effective H-1B cap petition process for USCIS and petitioners.

Additionally, USCIS will publish a notice in the Federal Register to announce the initial implementation of the H-1B registration process in advance of the cap season in which it will implement the requirement. Prior to implementation, USCIS will conduct outreach to ensure petitioners understand how to access and use the system. Once implemented, USCIS will announce the designated electronic registration period at least 30 days in advance for each fiscal year it is required.

On April 18, 2017, President Trump issued the Buy American and Hire American Executive Order, instructing DHS to “propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of U.S. workers in the administration of our immigration system.” The executive order specifically mentioned the H-1B program and directed DHS and other agencies to “suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.”

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