On December 6, 2019, U.S. Citizenship and Immigration Services (USCIS) announced that it has completed pilot testing and is implementing the long-anticipated electronic registration tool for the next H-1B lottery of fiscal year (FY) 2021 H-1B visas. In its announcement, USCIS indicated that the initial H-1B cap registration period will run from March 1, 2020 through March 20, 2020, and selected cases may be submitted starting April 1. Previously, on Nov. 8, 2019, the Department of Homeland Security (DHS) published a final rule establishing a $10 fee for each H-1B registration submitted by petitioners.

This registration process will not apply to H-1B transfers (between employers) or extensions of status applications. It will only impact new H-1B visas subject to the annual quota or “cap” of 65,000 visas (Regular cap) and an additional cap of 20,000 H-1B visas available for “specialty worker” beneficiaries with advanced degrees from US colleges or universities (US Masters cap). Exempt from the H-1B cap and this registration proposal are 6,800 H-1B1 visas, set aside from the 65,000 regular cap, for Chile and Singapore nationals. Moreover, specialty workers who will be employed at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965, as amended), or a related or affiliated nonprofit entity, and workers who will be employed at a nonprofit or governmental research organization, are exempt from the H-1B cap and this registration proposal.

Under this new process, employers seeking H-1B workers subject to the FY 2021 cap (for terms of employment starting on October 1, 2020) will complete an online
registration form that solicits basic data about the company and the prospective H-1B employee/beneficiary (including whether he or she holds a qualifying advanced degree). Employers will file a separate registration for each proposed H-1B worker and, per current rules, employers will be prohibited from submitting more than one registration per H-1B worker. The H-1B random selection process, if needed, will then be run based on the submitted registrations. Only employers with selected registrations will be eligible to file H-1B cap-subject petitions on or after April 1, 2020. USICS may determine it is necessary to continue accepting registrations, or open an additional registration period, if it does not receive enough registrations and subsequent petitions projected to reach the numerical cap.

USCIS advised it will post step-by-step instructions informing how to complete the registration process on its website, along with key dates and timelines, as the initial registration period nears. In addition, DHS intends to publish a notice in the Federal Register in the coming weeks to formally announce implementation of the H-1B registration system and provide additional details on the process.

Given the registration period will open on March 1, 2020, one month earlier than the typical opening of H-1B cap season, employers should already be planning and initiating their FY 2021 H-1B cap matters.

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