

CLIENT ALERT

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IMMIGRATION

USCIS PUBLISHES FINAL RULE ON H-1B REGISTRATION AND SCHEME FOR A MORE EFFECTIVE H-1B PROGRAM

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On January 31, 2019, the USCIS published its final rule amending H-1B regulations which operate to change two important aspects of filing cap-subject H-1B visa petitions, effective April 1, 2019. The first change implements an H-1B electronic registration system, which will be suspended for the fiscal year 2020 cap season, and the second amendment reverses the order by which the USCIS selects H-1B petitions under the H-1B regular cap and the U.S. advanced degree exemption.

The USCIS believes the new rules will present a positive benefit for employers, foreign workers and USCIS adjudicators, reduce the overall cost for employers and improve government efficiency as well as achieve President Trump's instructions under his April 18, 2017 Executive Order: "Buy American and Hire American" ("BAHA"). Under BAHA, President Trump ordered the USCIS to revise its rules and guidance to protect the interests of U.S. workers under the H-1B program and to ensure that H-1B visas are issued to the most skilled and highest-paid H-1B beneficiaries.

On April 1, 2019, the USCIS will first select H-1B petitions (or registration, once the registration requirement is implemented) submitted on behalf of all beneficiaries, including those that are eligible for the advanced degree exemption. Subsequently, the USCIS will select from the remaining eligible petitions, a number projected to reach the advanced degree exemption. The USCIS believes that reversing the order in which the USCIS counts these allocations will increase the number of petitions for beneficiaries with a U.S. Master's Degree or higher. The USCIS believes the change will result in an increase of up to 16% (or 5,340 workers) in the number of selected petitions for holders of U.S. advanced degrees or higher from a U.S. institution of higher learning.

The USCIS announced that for FY 2020, it will be suspending the electronic registration requirement in order to complete user testing and to ensure the system and processes are fully functional. Once the new registration requirement is implemented, petitioners seeking to file H-1B cap subject petitions, including for those holding U.S. advanced degrees to first register with the USCIS during a designated registration period. Only those whose registrations are selected will be eligible to file an H-1B cap-subject petition.

The USCIS stated that it will publish a notice in the Federal Register to announce the initial implementation of the H-1B registration process prior to the commencement of the FY 2021 cap season, and that prior to the implementation, it will conduct an outreach program.

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