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IMMIGRATION
LAWYERS
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Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529

Submitted via www.regulations.gov
Docket ID No. USCIS-2019-0012

Re: OMB Control Number 1615-0144
USCIS 60-Day Notice and Request for Comments:
Revision of a Currently Approved Collection: H-1B Registration Tool

Dear Sir or Madam:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced 60-day notice and request for comments on the proposed revisions to the H-1B registration tool, published in the Federal Register on June 27, 2019.¹

Founded in 1946, AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on the H-1B registration tool and believe that our collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

Concerns Regarding USCIS's Rollout and Implementation of the H-1B Registration Tool

As an initial matter, while AILA commends USCIS's stated intent in the H-1B registration final rule to institute a process that will increase government efficiency and lower overall costs for U.S. employers², AILA is concerned about the agency's lack of communication with the public regarding if, and when, the electronic registration system will be rolled out for the fiscal year (FY) 2021 H-1B cap filing season. Unless USCIS announces in the next few weeks its intention to roll

¹ 84 Fed. Reg. 30757 (June 27, 2019).

² *Id.*

out the electronic registration system for the upcoming FY2021 H-1B cap filing season, many U.S. employers will have no choice but begin to prepare for the FY2021 H-1B filing window as they normally would by preparing full petitions for all beneficiaries the respective company intends to sponsor, negating the cost savings that underline the agency's reasoning for this regulation. Moreover, transitioning to a new electronic system always carries with it the risk of technical issues and malfunctions. AILA urges USCIS to allow for maximum stakeholder participation and feedback to ensure that the system is completely functional and thoroughly beta tested before USCIS mandates its use.

Comments on H-1B Registration Tool Information Collection

I. Paperwork Reduction Act

a. Estimated Total Public Burden (in hours) Associated with this Collection

USCIS estimates that the public burden (in time) for the H-1B registration tool is 30 minutes per response, which includes the time for reviewing the instructions, gathering the required information, completing the application, preparing statements, and submitting the application electronically.³ AILA is concerned about the accuracy of USCIS's public burden estimate, as it is extremely low and appears to be based on an assumption that no preliminary work or analysis will be done by registrants to determine whether a particular position qualifies as a "specialty occupation" or whether the beneficiary meets the requirements for H-1B nonimmigrant classification before the registration is submitted to USCIS. As AILA previously noted in our comment on the proposed regulation, "Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens", to use the system as we believe USCIS intended (i.e., to register only those individuals who would conceivably qualify for H-1B status), employers acting in good faith will still need to invest resources to have an attorney or experienced human resources specialist conduct a preliminary analysis of whether the individual and position will qualify for H-1B classification prior to registering a potential H-1B beneficiary.⁴ This would include, but not be limited to, an evaluation of the salary offered to ensure it meets both prevailing and actual wage requirements, evaluation of a detailed job description, the company's business model, and a review and evaluation of the potential employee's educational, and possibly work credentials. AILA recommends that USCIS recalculate its public burden estimate and take the above-mentioned activities into consideration when calculating the total public burden (in time) for this proposed information collection so that the agency's public burden estimate more accurately reflects the time spent by respondents per response.

³ 84 Fed. Reg. at 30758.

⁴ See *AILA Submits Comments on USCIS Proposed H-1B Regulation*, AM. IMMIGRATION LAWYERS ASS'N (Jan. 2, 2019), published on AILA InfoNet at [Doc. No. 19010300](#).

b. Estimated Total Public Burden (in cost) Associated with this Collection

USCIS has indicated that the total public burden (in cost) associated with the H-1B registration tool is \$0.⁵ AILA notes that on August 12, 2019, the Office of Management and Budget (OMB) completed review of H-1B registration fee rule, entitled “Fee for Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap Subject Aliens.” If USCIS intends to impose a fee for the H-1B registration tool, USCIS will need to update its estimated public burden (in cost) and allow the public the opportunity to comment on its cost estimate before implementing the H-1B registration tool.

II. Overview Section

a. Tracking the Registration Status Online

AILA is concerned that USCIS is proposing to eliminate from the H-1B registration tool the ability of a registrant to track the status of a registration after it has been submitted to USCIS. Specifically, USCIS is proposing to delete the following language from the H-1B registration tool’s “Overview” section:

After you submit your registration, you can track its status through your USCIS account. Sign in to your account to check the status of a submitted registration and read any important messages from USCIS.

Eliminating the ability for registrants to track the status of a registration online will prevent registrants from being able to remain effectively informed regarding the status of a registration throughout the H-1B registration process and will reduce USCIS’s transparency and accountability to stakeholders regarding the process. AILA recommends that USCIS maintain the ability for registrants to track the status of a submitted registration online through the registrant’s USCIS account after it has been submitted to USCIS. This will increase trust among stakeholders about USCIS and the new H-1B registration tool and enhance the ability for registrants and beneficiaries to remain apprised of the status of their registrations throughout the entirety of the registration process.

III. About Registrant Section

a. Employer/Agent Information

In the “About Registrant” section, USCIS is proposing to include the following question regarding the U.S. employer / agent submitting the registration:

What is the legal name of the petitioning company or organization?

⁵ 84 Fed. Reg. at 30758.

AILA recommends that all references to “petitioning company or organization” be changed to “registering company or organization” or “prospective petitioning company or organization” as the registering company or organization is not yet petitioning the prospective beneficiary at this stage of the process.

IV. About Beneficiary Section

a. Beneficiary Information

USCIS provides instructional text in the “About Beneficiary” section of the H-1B registration tool that indicates:

You may only submit one registration per beneficiary in any fiscal year. If you submit more than one registration per beneficiary in the same fiscal year, all registrations filed by that registrant relating to the beneficiary for that fiscal year will be considered invalid.

It is unclear whether the word “you” in this instructional text refers to either the registrant or the beneficiary. To avoid confusion among registrants and beneficiaries, AILA recommends that USCIS specify the entity it is referring to in this section. If USCIS is referring to registrants, USCIS should use the word registrants instead of the word “you” in the instructional text so that beneficiaries do not misinterpret this text to mean that a beneficiary can only have one registration submitted on their behalf in any fiscal year.

For this section, USCIS could adopt, for example, the language that is currently provided in the “Overview” section of the H-1B registration tool:

A registrant may only submit one registration per beneficiary in any fiscal year. If a registrant submits more than one registration per beneficiary in the same fiscal year, all registrations filed by that registrant relating to the beneficiary for that fiscal year will be considered invalid.

If USCIS does revise this section to include the word “registrant”, AILA recommends that USCIS provide a definition of the word “registrant” in this section as instructional text to prevent confusion.

b. Master’s or Higher Degree from a U.S. Institution of Higher Education

In the “About Beneficiary” section, USCIS has included a question about the beneficiary’s master’s or higher degree attainment. Specifically, USCIS asks beneficiaries to select either “Yes” or “No” to the following question:

Does the beneficiary have a master’s or higher degree from a U.S. institution of higher education such that the beneficiary is eligible for the advanced degree

exemption under INA 214(g)(5)(C), and are you requesting consideration under the advanced degree exemption?

As this question in fact contains two questions, AILA recommends that USCIS divide this question into two separate questions and allow registrants to select either “Yes” or “No” for each question.

In addition, AILA recommends that USCIS modify the question regarding the beneficiary’s U.S. master’s or higher degree attainment, as some beneficiaries may not have attained a master’s or higher degree from a U.S. institution of higher education at the time of the H-1B registration period, yet may still be eligible for the exemption at the time of filing the H-1B petition if their registration is ultimately selected.⁶ Specifically, USCIS could revise the question as follows:

If the beneficiary’s registration is selected, will the beneficiary have completed all degree requirements towards a master’s or higher degree from a U.S. institution of higher education at the time of filing the H-1B petition with USCIS such that the beneficiary will be eligible for the advanced degree exemption under INA 214(g)(5)(C)?

c. Registering for H-1B employment not more than six month [sic] before the requested start date

In the “About Beneficiary” section, USCIS has included the following question regarding the timing of the registration:

Are you registering for H-1B employment not more than six month [sic] before the requested start date?

USCIS allows registrants to select either “Yes” or “No” this question.

AILA finds this question to be confusing. The prior version of this question indicates that USCIS originally intended to ask this question only if the registration period remained open. However, USCIS has removed this caveat (i.e., USCIS has removed the words “if registration period remains open”) from the revised version of this question. This is confusing and could be read to mean that the registration cannot occur more than six months in advance of the requested start date. However, the registration will, in most instances, take place more than six months before the requested start date, as the registration period must begin *at least 14 calendar days before* the first day an H-1B petition can be filed (April 1, 2020) in which an H-1B employment start date no earlier than October 1, 2020 will be requested.

⁶ AILA notes that in the final H-1B regulation, USCIS clarified that with respect to the date by which a beneficiary must complete degree requirements (i.e., by the registration date or complete petition filing date), USCIS indicated that the final rule “does not alter the general requirement for establishing eligibility at the time the petition is filed, but merely sets forth an antecedent procedural step that must be followed in order to establish eligibility to file an H-1B cap petition” See Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens, 84 FR 888 (Jan. 31, 2019) at 902.

If the question is only intended to apply to those petitions filed after the initial registration period, USCIS should clarify this by adding the following language back into the question:

If you are not filing in the initial registration period, are you registering for H-1B employment not more than six months before the requested start date?

Please also note that USCIS use of the words “six month” should be changed to “six months.”

V. Review and Submit Section

a. Review Process

In the “Review and Submit” section, USCIS provides the following instructional text:

Makes sure you have provided responses for everything that applies to you before you submit your registration. Missing information can slow down the review process after you submit your registration.

It is unclear what type of review process will take place after a registration is submitted to USCIS. AILA recommends that USCIS elaborate in the instructional text what the review process will entail after an H-1B registration is submitted to USCIS and indicate who will be conducting the review process.

b. Alerts and Warnings

USCIS is proposing to eliminate from the H-1B registration tool warnings and alerts that would notify registrants if they have provided an incomplete or invalid response to particular questions before they are able to submit the completed registration to USCIS. AILA is concerned that the elimination of such warnings and alerts could potentially result in registrants submitting registrations that contain incomplete or invalid responses to certain questions that could result in the registration being disqualified. AILA recommends that USCIS ensure that the H-1B registration tool provides alerts and warnings regarding incomplete or invalid responses to certain questions. This will minimize the potential for registrants to inadvertently submit a registration with incomplete or invalid responses. In addition, USCIS should also ensure there is a warning system in place for when multiple registrations are mistakenly submitted for the same beneficiary by a registrant.

c. Submit

USCIS indicates that once a registration has been submitted, it may not be edited. If an error has been made and is noticed after a registration has been submitted, the only option for registrants is to delete the registration and resubmit a new registration prior to the close of the registration period.

AILA recommends that USCIS allow for submitted registrations to be edited through the registrant's USCIS account up until the close of the registration period. This will allow registrants to more efficiently correct typographical errors or make edits to the registration in the event there are unexpected changes to the business, rather than having to delete the submitted registration and complete a whole new registration. Similarly, USCIS should also provide registrants with a mechanism to correct typographical errors after the registration period has closed, but before the registration selection is conducted.

Conclusion

We appreciate the opportunity to comment on H-1B registration tool and look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION