

As March 20 Fast Approaches, Where Do Your H-1B Cap Cases Stand?

Employers who employ international talent, including graduates of US university programs, have been preparing for the annual [H-1B "cap subject" petition](#) filing process since early this calendar year. H-1B petitions for specialty occupation workers who are graduating from university programs, moving to the United States for the first time, or transitioning from a different visa category to the H-1B are subject to an annual quota of 65,000, with an additional pool of 20,000 reserved for graduates of US advanced degree (master's or higher) programs.

This year, United States Citizenship and Immigration Services (USCIS) launched an [Electronic Registration Process](#) for the first time, requiring employers to pre-register their H-1B candidates and pay a \$10 per-candidate registration fee. The registration period opened on March 1, 2020, and will close at noon ET on March 20, 2020. By this point in the process, with only two working days before the close of the period, employers need to verify and check that their H-1B registrations all reflect the status of "submitted" in the government database. To ensure their candidates are in the new agency system, employers should:

1. Log into their registrant account and confirm each candidate is listed and categorized as "submitted" in the database.
2. Ensure they are prepared for submitting H-1B petitions as of April 1, 2020, if their petitions are selected for processing, ensuring that clear and complete proof of eligibility is available, including university degrees and transcripts, credential evaluations for individuals with foreign degrees or a combination of education and experience, and evaluation of the nexus between the degree of the candidate and the job offered.
3. Evaluate the length of the preliminary labor condition application (LCA) adjudication process by the US Department of Labor (DOL), as LCAs are a pre-condition for filing H-1B petitions.

With the nation facing delays, workplace shifts, closings, and other emergency measures stemming from the [novel coronavirus \(COVID-19\) pandemic](#), evaluating these issues immediately is essential. USCIS and DOL may need to reduce operational staff and, potentially, extend the schedule for any filing process, including H-1B cap cases. Employers who check their own docket closely will be more prepared to adjust to changes that these agencies, like their sister agencies across the executive branch, may need to make.

The only change [announced](#) to date, which USCIS made on March 16, 2020, is the temporary suspension of premium processing for FY2021 H-1B cap-subject petitions. [Premium processing](#) provides expedited 15-day processing for Form I-129, Petition for Nonimmigrant Worker, and Form I-140, Immigrant Petition for Alien Worker, based on payment of an additional fee. Even under premium processing, USCIS can issue a Request for Evidence (RFE) rather than decide a petition within the 15 days but will also provide accelerated review of RFE responses.

As USCIS has done in past years, premium processing will resume in a two-phased approach during the FY2021 cap season:

- The first phase will allow for premium processing for FY2021 H-1B cap-subject petitions filed as a change of status where beneficiaries are seeking to change nonimmigrant status from F-1 to H-1B. This will include H-1B petitions where the beneficiary qualifies for the advanced degree (“Master’s Cap”) exemption.
- The second phase will cover all other FY2021 H-1B cap-subject petitions.

USCIS currently plans for premium processing for FY2021 H-1B cap-subject petitions requesting a change of status from F-1 to H-1B to resume no later than May 27, 2020. Premium processing for all other FY2021 H-1B cap-subject petitions will resume no earlier than June 29, 2020.

Key Dates in the H-1B process are summarized in the table below:

Date	Action	Impact
February 24, 2020	Employers authorized to begin creating H-1B “registrant” accounts.	<i>Employers must have registered and, if working with outside counsel, completed virtual handshakes to allow the employer to include H-1B candidates in the H-1B cap lottery.</i>
March 1, 2020	H-1B Pre-Registration of candidates began at noon ET.	<i>With only two more working days left in the period, employers should confirm their H-1B pre-registrations are complete.</i>
March 20, 2020	H-1B Pre-Registration of candidates closes at noon ET.	<i>After Friday, March 20, 2020, no further pre-registrations will be accepted. No candidate whose case is not pre-registered will be considered in the annual random selection lottery.</i>
March 31, 2020	This is the date by which USCIS plans to announce selection of candidates.	<i>While USCIS has announced no change in its plans to date, the national COVID-19 emergency may affect this deadline.</i>
April 1, 2020	This is the first date H-1B petitions may be filed for the new fiscal year, which starts October 1, 2020.	<i>If USCIS does not complete screening of pre-registrations and administration of its lottery selection, 2020 would be the first year in which employers would not be free to file a full 180 days before the start of the fiscal year.</i>
May 27, 2020	Premium processing for FY2021 H-1B cap-subject petitions requesting a change of status from F-1 to H-1B to resume.	<i>Cases for graduates of US university programs will accordingly be the first to be adjudicated under premium processing.</i>
June 29, 2020	The <i>earliest date</i> by which premium processing for all other FY2021 H-1B cap-subject petitions will resume.	<i>All other H-1B cases will be processed under regular processing until at least this date.</i>

For more information about the topics raised in this Legal Update, please contact any of the following lawyers.

Elizabeth (Liz) Espín Stern

+1 202 263 3825

estern@mayerbrown.com

Grace Shie

+1 202 263 3845

gshie@mayerbrown.com

Paul Virtue

+1 202 263 3875

pvirtue@mayerbrown.com

Timothy C. D'Arduini

+1 202 263 3887

tdarduini@mayerbrown.com

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