



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

October 4, 2019

Samantha Deshommes
Chief, Regulatory Coordination Division
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–2019–0006
OMB Control Numbers: 1615-0131 & 1615-0144

**Re: Registration Fee Requirement for Petitioners Seeking to File H-1B Petitions
on Behalf of Cap Subject Aliens**

Dear Ms. Deshommes:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the U.S. Citizenship and Immigration Services (USCIS) notice of proposed rulemaking (NPRM), “Registration Fee Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens,” published in the Federal Register on September 4, 2019.¹

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 American companies, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

Concerns Regarding the Timing of the Agency’s Implementation of the H-1B Registration Fee and Electronic Registration System

As an initial matter, AILA remains concerned regarding the timing of the agency’s implementation of the H-1B registration fee and electronic registration tool. AILA acknowledges receipt of [a letter from USCIS](#), dated September 30, 2019, that USCIS sent to AILA in response to a [sign-on letter](#) that AILA and 14 other organizations sent to USCIS on August 16, 2019 (“Coalition Letter”). In its September 30, 2019 letter, USCIS indicates that the agency “intends to implement the

¹ 84 Fed. Reg. 46460 (Sept. 4, 2019).

AILA National Office

1331 G Street NW, Suite 300, Washington, DC 20005
Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

registration process for the FY 2021 cap season, subject to continued testing of the system.” USCIS also states that the “Department of Homeland Security 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 first implement the requirement.”

While AILA appreciates USCIS’s communication regarding the agency’s intentions, to the extent that USCIS does in fact implement the H-1B registration fee and electronic registration system in time for the FY 2021 cap season, AILA strongly urges USCIS to finalize this regulation, complete the requisite testing of the system, and publish a notice in the *Federal Register* as soon as possible and no later than November 1st to ensure attorneys, U.S. employers, and other stakeholders have sufficient time to adjust their H-1B filing preparations and adequately familiarize themselves with the registration payment and electronic tool well in advance of the initial registration period.

As noted in the Coalition Letter to USCIS, many companies and attorneys have already begun preparing for the FY 2021 cap season. Until DHS announces in the *Federal Register* that the agency will implement the electronic registration tool for the FY 2021 cap season, as a precautionary measure, many attorneys and U.S. employers will prepare for the FY 2021 H-1B cap filing window as they normally would by taking steps to prepare full H-1B petitions, negating the cost savings that underline the agency’s reasoning for the H-1B registration requirement. Indeed, given the lack of certainty about whether the H-1B electronic tool will be in place for the upcoming FY 2021 H-1B cap season, many attorneys and U.S. employers have already begun preparing for the FY 2021 H-1B cap as they normally would by circulating intake questionnaires, collecting supporting documentation from beneficiaries, and expending fees and costs for professional services. Without a formal announcement from DHS by November 1, many more attorneys and U.S. employers will soon follow a similar course of action, further negating the cost savings for the H-1B registration requirement.

Comments on Registration Fee Requirement

I. Acceptable Methods of Payment

According to the “[H-1B Registration Workflow with Payment](#)” that USCIS released in association with the proposed registration fee requirement, it appears that USCIS will accept payment of the registration fee via the [Pay.gov](#) portal. It also appears that a U.S. employer (the “registrant”) may submit one combined registration fee payment for multiple prospective H-1B workers (“beneficiaries”) at the same time via the Pay.gov portal. AILA supports the ability to “bundle” the H-1B registration fees for multiple beneficiaries into one payment as this will reduce the overall time burden on stakeholders for submitting the registration fee payment. It is unclear, however, whether the Pay.gov portal would permit a registrant to make several bundled registration fee payments on multiple occasions over a period of several days, or if only one bundled registration fee could be submitted per registrant during the registration period. As registrants such as large U.S. employers will likely add new beneficiaries throughout the registration period, AILA recommends that registrants have the ability to make several bundled registration fee payments through the Pay.gov portal.

It is also unclear, however, whether the submission of the registration fee payment via Pay.gov is limited to U.S. employers, or whether attorneys may also submit payments via Pay.gov on behalf of their U.S. employer clients. As attorneys representing U.S. employers in the H-1B cap filing process generally handle not only the preparation and filing of the H-1B petition but also the submission of any relevant application fees to USCIS, AILA recommends that attorneys have the ability to submit registration fee payments via the Pay.gov portal for their U.S. employer clients.

On pages 17 and 18 of the “H-1B Registration Workflow with Payment” document, it appears that the registration fee payment can be paid with either a debit or credit card, or with a withdrawal from a checking or savings account. However, USCIS only provides a screen shot in the workflow document for the credit card payment transaction (page 19) and does not provide any further evidence in the workflow that the withdrawal from a checking or savings account (ACH) will be permitted for the registration fee payment. In the event that a bank withdrawal is not a permissible option for submitting the registration fee payment, AILA urges USCIS to allow for the registration fee to be paid with a withdrawal from a checking or savings account (ACH) as this is a common method of payment and will better accommodate U.S. employers and immigration practitioners submitting registrations on behalf of a high volume of beneficiaries.

AILA further notes that USCIS only accepts payments online through the Pay.gov portal for a limited number of immigration applications (i.e., N-400, N-600K, I-539, and I-90). As such, many U.S. employers and attorneys have little or no experience using the Pay.gov portal as many of these applications are prepared and submitted directly by the applicant or beneficiary since they do not require a petitioning employer. Given the limited familiarity of stakeholders with the Pay.gov portal, AILA strongly recommends that USCIS conduct stakeholder outreach and provide guidance and trainings on how to utilize the Pay.gov portal well in advance of the initial registration period. Advance training will reduce the amount of excessive last-minute traffic on this portal and help reduce uncertainty and anxiety related to the new system.

II. Time Burden Associated with Completing the \$10 fee payment

USCIS estimates that there would be a 7-minute additional time burden associated with reading the instructions and completing the electronic fee payment.² 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 stakeholders are familiar with the Pay.gov portal, rather than first time users. In fact, as outlined above, many U.S. employers and attorneys have little or no experience using the Pay.gov portal. In light of this, USCIS should recalculate the total public burden (in time) to take into consideration that in many, if not most cases, registrants will be accessing and navigating the Pay.gov portal for the very first time as part of the H-1B registration period. Such a recalculation will ensure that the public burden estimate, and the monetized equivalent time burden, more accurately reflects the actual time spent by stakeholders to make the registration fee payment.

² 84 Fed. Reg. at 46464.

In addition, given the limited familiarity of stakeholders with the Pay.gov portal, AILA reiterates the importance of USCIS conducting stakeholder outreach and providing guidance and trainings on the Pay.gov portal well in advance of the initial registration period.

III. Registration Fee Amount

DHS indicates in the notice of proposed rulemaking that it is proposing a fee for submitting H-1B registrations to recover costs that USCIS must expend to implement and maintain the registration system.³ DHS also notes that as a secondary benefit that “it is reasonable to conclude that the existence of a \$10 fee would reduce the likelihood that frivolous registrations would be submitted to flood or otherwise game the registration system.”⁴

AILA is concerned that the addition of a \$10 registration fee will not sufficiently deter speculative and/or fraudulent filings. AILA acknowledge that the registration fee is in addition to other protections built into the “Registration Requirement for Petitioner Seeking to File H-1B Petitions on behalf of Cap-Subject Aliens” final rule. Such protections include 1) attestation requirements that the registrant intends to file a petition on behalf of the named beneficiary if selected and the agency’s ability to investigate and hold petitioners accountable for not complying with the attestations if a pattern of not filing petitions for selected beneficiaries at a rate indicative of a pattern and practice of abuse of the registration system is detected; 2) USCIS keeping unselected petitions on reserve and if USCIS determines that it needs to increase the number of registrations selected to reach the cap, it selecting additional registrations from that reserve; and 3) USCIS retaining the ability to reopen the registration period if selecting reserved registrations is not sufficient to meet the cap.

In addition to these protections, AILA highly recommends that USCIS take into consideration in its calculations for how many registrations will be selected in the registration lottery under 8 CFR 214.2(h)(8)(iii)(E) that there may be a significantly higher rate of selected registrations resulting in unfiled, denied, or revoked petitions. AILA also recommends that USCIS reserve enough unselected registrations that could be invited to file in the situation where the H-1B petition approval rate will not result in meeting the H-1B numerical limitations for FY 2021. Selecting enough registrations and reserving sufficient unselected registrations immediately following the initial registration period will alleviate any delays in processing and ensure that beneficiaries are able to begin work on their requested start dates.

Conclusion

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

³ 84 Fed. Reg. at 46461.

⁴ 84 Fed. Reg. at 46466.

Comments: Registration Fee Requirement

October 4, 2019

Page 5

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

AILA National Office
1331 G Street NW, Suite 300, Washington, DC 20005
Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

AILA Doc. No. 19100701. (Posted 10/7/19)