

***Advocacy Recommends that USCIS Postpone H-1B Visa Pre-Registration Requirement and Extend Comment Period***

On December 20, 2018, the Office of Advocacy (Advocacy) filed a comment letter with the U.S. Citizenship and Immigration Services (USCIS) on its proposed rule, *Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens*.

- H-1B visas are temporary visas used by employers to hire high-skilled foreign workers. There is a yearly capacity of 65,000 spots for general petitions and an exemption from this cap of 20,000 for petitions for workers with a U.S. master's or higher degree. Since USCIS created the lottery process for these slots in 2005, it has routinely received petitions far surpassing the capacity within the first few days.
- The proposed rule creates an early registration system, where employers file online registrations for intended workers within a two-week period sometime before April 1. USCIS would then conduct a registration lottery; those selected are able to file a full H-1B petition. USCIS proposed a similar registration system for the H-1B visa program in 2011, but the rule was never finalized. The rule would also change the order of the H-1B lottery process to increase the number of beneficiaries with a U.S. master's or higher degree.
- Advocacy is concerned that the proposed registration requirement may encourage companies to submit many registrations to increase their chances of obtaining H-1B workers, flooding the system and making it difficult for small businesses to be selected in this lottery. Advocacy also believes that the early timing of the registration process may shut small businesses out of the H-1B program because they cannot anticipate their employment needs at an earlier date. Advocacy is also concerned that USCIS has not neither listed a timeline of specific dates for compliance nor tested this new electronic registration platform against potential fraud and abuse.
- Small businesses have also told Advocacy that the provision that increases the numbers of H-1B workers with a U.S. master's or higher degree may be detrimental to small businesses, because many small start-up companies may employ skilled and highly paid staffers with only a four-year degree.
- Advocacy recommends that USCIS postpone the implementation of the registration requirement until after this filing season, extend the comment deadline by 60 days, and further consider the impacts of this rule on small businesses.

For more information, visit Advocacy's webpage at <http://www.sba.gov/advocacy>, or contact Assistant Chief Counsel Janis Reyes by email at [Janis.Reyes@sba.gov](mailto:Janis.Reyes@sba.gov) or by phone at 202-205-6533.