

H-1B Update: New Rule Focuses on Beneficiary-Centric Improvements

Article By:

Aimee Guthat

USCIS [published](#) its Improving the H-1B Registration Selection Process and Program Integrity final rule on Feb. 2, 2024. The new final rule has three basic categories: creating a beneficiary-centric selection process, specifically allowing for start date flexibility, and other enhancements to the integrity of the selection process.

This is the first phase of [final rules that have been expected](#) based on the Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Works Rule that was released for Notice and Comment in October 2023.

USCIS wanted to get the improvements in the H-1B cap process into effect in time for this year's lottery. Clarifications on H-1B definitions and others regarding nonimmigrant visa filings are not in this final rule.

Beneficiary-Centric

DHS has introduced a beneficiary-centric selection process to reduce manipulation problems. No matter how many petitioners submit registrations for the same beneficiary for bona fide job openings, the beneficiary will be entered only into the lottery once. When a beneficiary is selected, all petitioners who submitted registrations for that individual will be notified. This likely will give beneficiaries more ability to negotiate with employers about which job to accept.

In addition, the final rule makes clear that a valid passport or other valid travel document will be required to participate in the registration. "Valid travel documents" was added so stateless individuals could be included in the lottery. The travel document must be valid for entry into the United States, the rule notes. A beneficiary can use only one passport or travel document for all lottery submissions. Certain changes in passport and travel document information between the registration and the filing of a petition *may* be acceptable if the information has to do with marriage, change in gender identity, or a lost or stolen passport or travel document.

DHS did not address whether related entities would be prohibited from submitting multiple registrations for the same beneficiary as this might not be necessary once the beneficiary-centric selection process is in place.

Start Date Flexibility

DHS has clarified that petitions may be filed with start dates after October 1 of the relevant year if the case is not filed more than six months before the proposed start date. DHS did not address extending cap gap protection to qualified students, which was part of the October 2023 proposed rule.

Enhancing Integrity

Under this category, DHS codified its ability to deny or revoke an approved petition if:

- There is a change in a beneficiary's identifying information from the registration to the petition filing;
- It discovers an invalid registration fee;
- It discovers the petition is not based on a valid registration; or
- It discovers that statements made in the registration attestation, the petition, or the LCA were inaccurate, fraudulent, or misrepresent a material fact.

When a registration is submitted, the petitioner signs the following attestation under the penalty of perjury:

- All the information contained in the registration submission is complete, true, and correct;
- The registration(s) reflect a legitimate job offer; and
- The registrant, or the organization on whose behalf the registration(s) is being submitted, has not worked with, or agreed to work with, another registrant, petitioner, agent, or other individual or entity to submit a registration to unfairly increase chances of selection for the beneficiary or beneficiaries in this submission.

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