



January 22, 2020

January 2020 Immigration Alert

USCIS Officially Releases Regulations Regarding Its H-1B Electronic Registration Tool for the FY 2021 H-1B Cap

On January 9, 2020, U.S. Citizenship and Immigration Services (“USCIS”) officially released regulations to implement the H-1B Electronic Registration Tool (“ERT”).

In the past, USCIS would open the H-1B cap lottery and begin accepting H-1B cases for the fiscal year (“FY”) during the first week of April. During that week, USCIS would accept fully completed H-1B petitions from U.S. employers wishing to hire non-U.S. employees who never previously received H-1B employment and then would complete a random computer-generated lottery to pick a total of 85,000 petitions. For those not selected, USCIS would return the fully completed H-1B petition to the employer or its legal representative.

For the upcoming FY 2021 H-1B cap, USCIS will replace the traditional H-1B filing process with the new H-1B ERT system. Under the H-1B ERT, a company or its attorneys will register the company and the to-be-sponsored H-1B employee(s) within the H-1B ERT system. The company information required for the H-1B lottery registration includes company name, employer federal tax identification number, the company’s main address, and the company signatory’s name, title, and contact information. The employee’s information required for the registration includes the person’s name, gender, highest degree received, date of birth, country of birth and citizenship, and passport number.

Unlike previous years, it is not necessary to prepare a full H-1B petition including the Labor Condition Application until after the case is chosen under the H-1B ERT lottery.

The initial H-1B ERT registration period will be from March 1, 2020, to March 20, 2020. To avoid potential complications, all registrations should be submitted no later than March 19, 2020. The registration requires (1) entry of the sponsoring company’s information, listed above; (2) entry of the employee’s information, listed above; and (3) payment of a \$10 registration fee for each employee to be registered.

After March 20, 2020, USCIS will complete its lottery and select H-1B ERT-registered employees no later than March 31, 2020. By March 31, 2020, USCIS will notify chosen registrations via email or text through the company or the registered attorney. The company must submit the actual H-1B petition to USCIS within a specific time of not less than 90 days from the notification date. The registrations that were not chosen cannot submit an H-1B petition but will be put on a waiting list to fill the H-1B annual quota, if numbers become available again due to employers failing to file the full petition with USCIS by the allotted time after selection.

Please note that the H-1B ERT registration does not officially start work authorization for those in F-1 status whose OPT EAD work authorizations expire before October 1, 2020, under what is known as the H-1B “cap gap.” Automatic work authorization will be extended when the H-1B petition for change of status is timely filed before the OPT EAD work permit expiration date. Therefore, to receive H-1B cap-gap benefits, those chosen for the H-1B cap under the H-1B ERT will need to submit the H-1B change of status petitions before the current OPT or STEM (science, technology, engineering, and mathematics) OPT EAD work authorization expires.

Increased Customs and Border Protection Screening at U.S. Ports of Entry for People of Iranian Descent

As of January 9, 2020, there have been reports of increased scrutiny by Customs and Border Protection (“CBP”) of travelers of Iranian decent—including U.S. citizens—reentering the United States from Canada. CBP released a statement that it may conduct additional screening on “individuals who present a known risk or individuals about whom we need more information to make a determination of risk,” and that this may result in some travelers experiencing increased wait times and subsequent interviews. As a result, we advise companies with employees of Iranian decent or nationality to avoid international travel outside the United States at this time, if possible.

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If you have any questions regarding this Alert or any other U.S. immigration issues, please contact Epstein Becker Green’s immigration team:



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