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Pre-registration of H-1B applications likely from next April

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NEW DELHI: The new electronic pre-registration requirement for H-1B applications is likely to kick in from April 2020. The United States Citizenship and Immigration Services (USCIS) recently obtained approval from the office of management and budget (OMB) for a new rule that will enable the agency to add electronic registration fees for H-1B applications. The fees have not yet been announced.

In the first few days of April each year, USCIS opens a window for filing of the H-1B cap applications. Owing to the huge number of applications, the annual quota of 85,000 (including Masters' cap quota of 20,000) is met within a few days itself. For applications that will be filed in April 2020, the earliest the successful applicants will be able to work in the US will be

from October 1 that year.

The final rules for the electronic pre-registration requirement were announced in January. However, its implementation was kept in abeyance for H-1B applications that were filed in April 2019.



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A group of 15 associations comprising of the American Immigration Lawyers' Association, think-tanks such as Fwd.US (which has as its founding members Mark Zuckerberg and Bill Gates), US Chamber of Commerce and others have sought certainty on the timelines.

A representation made by them on August 16 states: "USCIS should publicly confirm by September 15 if, and when, the electronic registration system will be rolled out for the H-1B cap filing season for fiscal 2021 (which refers to applications to be filed in April 2020). USCIS should allow for maximum stakeholder participation and feedback as soon as possible on the technical functioning of the electronic registration tool to ensure that the system is completely functional and thoroughly tested before USCIS mandates its use."

This is essential as sponsoring employers commence preparation for the filing season as early as August, which includes identifying prospective employees, collating documentation, hiring and working with attorneys. Further, the goal must be to avoid technical glitches and operational disruptions, the associations explain.



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According to the USCIS, once implemented, the electronic registration requirement will require sponsoring employers seeking to file H-1B cap applications to first electronically register with USCIS during a designated registration period. Only those whose registrations are selected will be eligible to file an H-1B cap-subject application.

In other words, sponsoring employers would be saved from filing extensive documentation for all applications just for entry into the lottery, as is being done currently. The documentation is exhaustive, especially for IT service companies, who place their H-1B employees at client sites. The applications are then subject to a random lottery process, selected applications are then further processed and approved or rejected.

USCIS estimates the resultant cost savings for sponsoring employers to be upward of \$47 million. “These savings will not be forthcoming without a prompt confirmation from USCIS,” states the representation.

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There is a downside to the pre-registration process. David H Nachman, managing attorney at NPZ Law Group, explains: “Labour Condition Forms, that are filed prior to H-1B filings, require employers to indicate whether H-1B workers will be placed at third party client worksites, details of the number of workers at each site, and the names and address of these clients.

“Pre-registration has a potential for abuse, because the fair and random H-1B lottery may be relegated to a closely guided and criteria-driven process. The data available may be filtered to choose only those H-1B registrations which do not require third-party placements, or to select applications of sponsoring companies that only have a certain number or less of foreign employees. It could result in a discriminatory process for choosing which companies get H-1B visas,” explains Nachman. It remains to be seen how it will pan out, say immigration experts.