H-1B CAP TOOLKIT (FY2022)

A guide to helping manage the H-1B Cap season with Immigration Case Management

The fiscal year (FY) 2022 H-1B Cap Season has arrived, and immigration practitioners across the US are ramping up to support the preparation and filing of cap-subject H-1B petitions. To assist organizations during this hectic time, Equifax has prepared this H-1B Cap Toolkit, which contains tips and best practices for helping you manage H-1B cap cases with a special focus on the H-1B registration process, which will be in effect again for this year's filings with USCIS.

Overall Approach for Gathering H-1B Information

While the H-1B registration process only requires a limited amount of biographical and employer-related information, many practitioners feel they must conduct a full "legal review" to help ensure the case is approvable (if selected) as part of their due diligence and ethical obligations to provide responsible legal representation.

Practitioners must also be mindful of the 90-day filing requirement once an H-1B beneficiary is selected. Given the increasing amount of scrutiny of H-1B petitions, most practitioners will need more than 90 days to gather a sufficient amount of information and documentation to support the underlying petition. Firms with a significant H-1B case volume will also find that 90 days might not provide enough time to prepare a large number of petitions within the required timeframe.

Given these realities, many practitioners are choosing to request FN and job-related information through their standard questionnaires and intakes at the H-1B registration process. As described below, firms can still implement other customizations to account for the H-1B registration steps.

Five Case Management Software Best Practices and Must-Have Features

1. Designate an H-1B Process as "Cap" Subject

2. Use Online Questionnaires and Data Portals

3. Facilitate the H-1B Registration Step Through Reports

4. Record and Track the steps in the H-1B Cap Petition Process

5. Standardize Email Templates

Five Case Management Software Best Practices and Needed Features

1. Designate an H-1B Process as "Cap" Subject

Immigration practitioners often categorize and designate a variety of "case types" in their services, including the typical "alphabet soup" visa classes for temporary nonimmigrants (e.g., B-1/B-2, E-1/E-2, H-1B, J-1, L-1, etc.). While organizations should avoid creating too many classifications, most practitioners find it helpful to designate their "cap-subject" H-1B petitions so they can be more easily tracked and managed during cap season and beyond.

Important Case Management Feature

Users want the ability to create "custom" immigration process types which help define the immigration forms, required documents, questionnaires, and activities associated with an H-1B Cap Case (or any other case). Ideally, the practitioner should also be able to easily "borrow", or replicate, from other existing case types within the system to help facilitate the creation of custom process types.

2. Use Online Questionnaires and Data Portals

As part of the H-1B petition, practitioners will need to gather a variety of sensitive biographical data and documents from the beneficiary (and dependents if applicable), along with information that is critical for determining their eligibility. To help ensure this information is gathered in an efficient way during the cap season, practioners can utilize online questionnaires that are user friendly and comprehensive.

Important Case Management Feature

Users want the ability to define and use specific questionnaires to gather the required information from the dependents. The questionnaire should also include a list of needed documents and provide a method for uploading scanned copies. Ideally, the "foreign national" portal should be mobile-optimized, so that the beneficiary can more easily complete the process on any device.

3. Facilitate the H-1B Registration Step Through Reports

Once the detailed questionnaires have been completed, practitioners will need to determine whether they have sufficient information needed for the H-1B registration process – including both petitioner information and specific details from the foreign national beneficiary. Given the very tight registration window, practitioners will want to collect and double-check this information as soon as possible.

Important Case Management Feature

Users want the ability to create an "H-1B registration report" which includes the specific fields needed to register a cap-subject H-1B beneficiary through the online portal. Practitioners should be able to filter the report by a variety of useful criteria such as responsible attorney, employer petitioner, and date range.

4. Record and Track the Steps in the H-1B Cap Petition Process

Like most immigration matters, an H-1B cap petition has a defined series of steps that must be completed in a specific order (and often performed by different individuals) before the case can be filed. While some organizations may simply document these steps by completing a checklist, other practitioners will utilize detailed case steps (or "activities") to provide an enhanced level of tracking and reporting. Using this system, practitioners can keep track of important H-1B Cap milestones such as the following:

- All docs received (from the FN)
- H-1B registration submitted
- H-1B registration confirmed
- H-1B registration selected
- Education evaluation submitted (and received), if applicable
- LCA Posting confirmed
- LCA Filed
- And many more!

Important Case Management Feature

Users want the ability to define an H-1B cap case activities list, which can be automatically attached to all H-1B cap cases opened in the system. This advanced case tracking feature should enable the practitioner to define, sort, and name the specific activities (borrowing from other process types as needed). Practitioners may also benefit from these additional case tracking features:

- Enable the capture of a "receipt" number with the completed activity (e.g., when the H-1B registration step is completed)
- Define target completion times for each activity, along with the assigned role
- Share these activities with their foreign national and HR clients through an online portal, so that individuals are kept up to speed with the case progress.

5. Standardize Email Templates

In the course of preparing an H-1B cap petition, practitioners will send a variety of messages to both the employer(HR) and beneficiary (FN) in order to request information and keep them informed of updates. To facilitate case preparation, practitioners should standardize these email templates for the upcoming H-1B case season.

Important Case Management Feature

Users want the ability to define customized email templates with standardized language, including pre-defined attached documents. A well-designed case management system will also enable practitioners to send these notifications as they are completing the detailed H-1B activity steps (e.g., once the case is filed, a templated message can be sent informing the client).
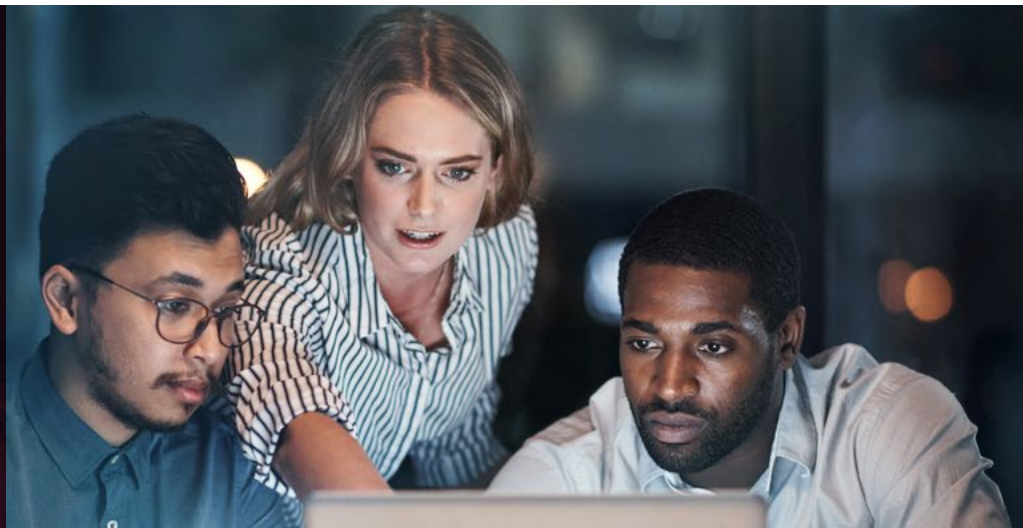
Reference: H-1B Registration Process

Now in its second year of implementation, the H-1B registration process requires employers to register each qualified cap-subject H-1B visa beneficiary through an online portal before filing the actual petition with the USCIS. If the H-1B registration submissions exceed the statutory limits, USCIS will conduct a computer-generated lottery to determine which registrations may proceed with filing. Once a registration has been accepted, petitioners will have 90 days to file the H-1B petition.

The H-1B registration portal (available through my.uscis.gov) enables US employers or agents to submit multiple cap-subject beneficiaries (per registration) for whom the petitioner or agent seeks to obtain H-1B classification. Employers or agents must complete a series of web pages that capture basic employer data about the petitioner and biographical details of each beneficiary included in the registration.

Petitioner Information

Information requested about the employer/petitioner includes business name, EIN, primary address, and details regarding the authorized signatory.

Beneficiary Information

Information requested about each beneficiary includes name, gender, date of birth, countries of birth and citizenship, passport number, and a question regarding whether the beneficiary has a master's or higher degree from a U.S. institution and intends to request consideration under the advanced degree exemption.

As noted above, a registration may include multiple beneficiaries, but a petitioner may only submit one registration per beneficiary in any fiscal year. If a petitioner submits more than one registration per beneficiary in the same fiscal year, all registrations filed by that petitioner relating to that beneficiary for that fiscal year will be considered invalid.

## Potential Changes to the H-1B Registration Process for FY2022

On January 8, 2021, the USCIS published a final rule to change the H-1B cap selection process to a wage-based system that would prioritize petitions based on registrations with the highest salary levels. While the regulation is scheduled to take effect on March 9, 2021 (60 days after publication), the Biden Administration has issued a memorandum requesting that executive departments and federal agencies postpone any new rules not yet in effect by at least 60 days. In addition, lawsuits will likely be filed challenging the regulation as contrary to the H-1B statute, which calls for selection to be based on the order that petitions are received. Based on the above, many practitioners feel that the changes will likely NOT go into effect for the FY2022 season.

H-1B Registration Fee

Each H-1B registration will require a $10 non-refundable fee to account for the resources needed to implement and maintain the registration system. The fee will be required for each beneficiary included in the registration; for example, if a registration includes 5 beneficiaries, the petitioner will need to pay $50. Payment will be collected through pay.gov after the registrant provides billing information and a form of payment (credit card or US bank account). Pay.gov will then redirect to a uscis.gov confirmation screen.

Registration Timing

The USCIS announced that it would open an initial registration period from March 1 through March 20, 2020 for the fiscal year 2021 H-1B cap selection process. The USCIS has not yet announced the initial registration period for FY2022, but most expect the portal to be available in early March 2021.
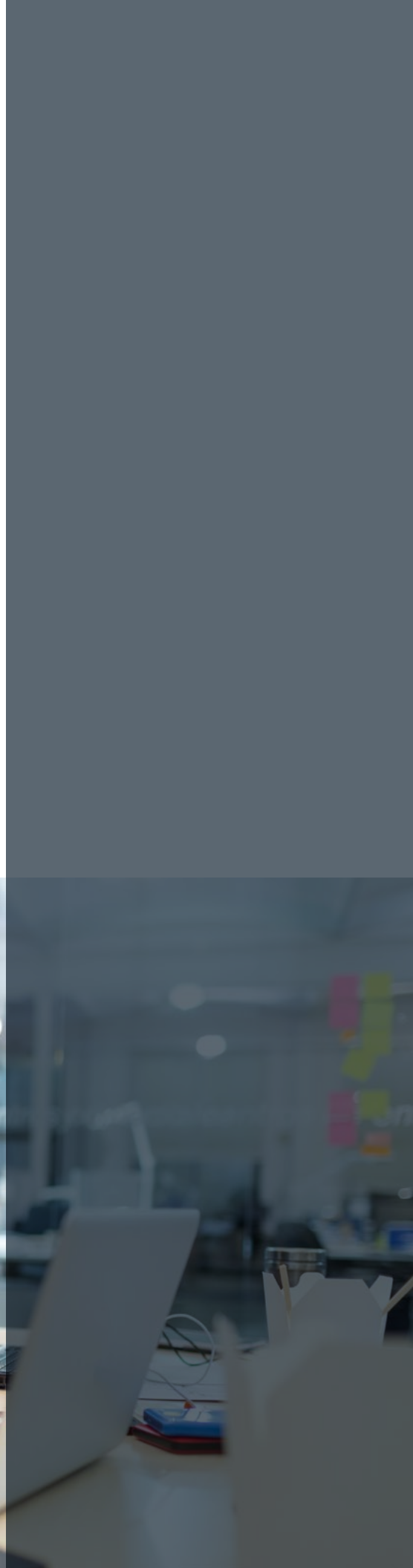
H-1B Registration Best Practices

1. Review the H-1B registration requirements by visiting the following links:

   Final Rule: 84 FR 888, 1/31/19

   H-1B Registration tool: 60-day notice published in the Federal Register

   USCIS website: H-1B Electronic Registration Process

2. **Note:** AILA members may also wish to consult AILA's H-1B Registration Tool Featured Issue available here.

3. Critical: If you haven't already, make sure your attorneys or accredited representatives register for a USCIS.gov account so they can submit and manage the registrations in a timely fashion when the H-1B registration window opens. Accounts can be created by visiting https://myaccount.uscis.gov/users/sign_up.

4. In order to create an account, you will need to provide a secure password, answers to several challenge questions, and a second form of authentication (through an app, email address, or phone number text messaging).

5. Review the Case Management Best Practices above to modify your workflows and overall management processes for H-1B cap cases.

For more information, visit:

workforce.equifax.com/solutions/immigration-case-management