

May 18, 2023

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By ESEC at 10:09 am, May 19, 2023

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, D.C. 20528

Re: Safeguarding the integrity of the annual H-1B lottery

Dear Secretary Mayorkas,

Thank you for your continuing leadership on issues of critical importance to the nation. I am writing to spotlight growing concerns with the annual H-1B lottery selection process, and to encourage DHS to prioritize regulatory action targeting these issues before the next H-1B lottery selection in April 2024. We recognize the Department has many priorities, but we believe that immediate action is needed to ensure fairness in the system.

As you know, the H-1B program is constrained by the Congressional cap put in place in 1990. The demand for the limited number of H-1B visas is high and increasing. To manage that demand, U.S. Citizenship and Immigration Services (“USCIS”) selects visa recipients through a lottery system. Employers seeking to file H-1B petitions register each intended petition electronically, and USCIS conducts a lottery selection process to allocate the available visa numbers.

When this registration process was originally proposed, we raised concerns that the process lacked sufficient safeguards to prevent fraudulent and abusive practices (see <https://www.regulations.gov/comment/USCIS-2008-0014-0461>). The more registrations submitted on behalf of a single beneficiary, the more likely that beneficiary is to secure an H-1B visa. This creates an incentive structure for individuals to secure as many registrations as possible, with unscrupulous actors exploiting the situation. Data released by USCIS last month suggests a significant rise in the number of individuals taking advantage of this loophole. In this past year’s lottery, USCIS received about 759,000 eligible registrations. Approximately 350,000 beneficiaries submitted a single registration, representing a 13.2% increase from the previous year. Conversely, another group of about 96,000 individual beneficiaries accounted for the remaining 409,000 registrations, a 147% increase from the previous year. This rapid growth in multiple registrations materially disadvantages good faith users of the system and jeopardizes the integrity and validity of the H-1B selection process.

This is an issue of significant business consequence to employers who use the H-1B registration process appropriately, and personal consequence to the talented, high skilled immigrants who are

running out of U.S.-based work options are being forced to leave their jobs in the United States. This is impacting a significant number of Microsoft employees and their families, causing business disruption and economic harm. If the current H-1B lottery selection system remains in place, we anticipate an even larger number of our employees, most of whom are U.S. university graduates, will have no choice but to leave the United States. Moreover, there is increasing concern that unscrupulous actors may take advantage of these highly skilled immigrants by offering to submit H-1B registrations on their behalf for a fee, even in the absence of a bona fide job offer, and “gaming” the system.

Given the importance of sustaining the integrity of the H-1B program, we urge DHS to prioritize reforming the H-1B lottery selection process before the next lottery. There are simple, targeted solutions that can immediately address the manipulation of the H-1B lottery (e.g., running the selection process based on unique individuals rather than the registration of multiple hypothetical employers). We also recommend instituting these changes through the publication of an interim final rule in order to have these fixes in place in advance of next year’s lottery. We believe an interim final rule would be well justified under these circumstances, and very much welcomed by all who are interested in a fair and well-functioning H-1B program.

Thank you very much for your attention to this urgent issue. We would be happy to provide any further information that would facilitate your consideration of the problem or potential solutions to it if you or your designates would find it helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Smith", written in a cursive style.

Brad Smith
Vice Chair and President
Microsoft



**U.S. Citizenship
and Immigration
Services**

September 12, 2023

Brad Smith
Vice Chair and President
Microsoft Corporation
1 Microsoft Way
Redmond, WA 98052-6399

Dear Mr. Smith:

Thank you for your May 18, 2023 letter to the Department of Homeland Security (DHS) regarding the H-1B cap selection process. I am responding on behalf of the Department.

As you noted, during the registration period for the fiscal year (FY) 2024 H-1B cap, U.S. Citizenship and Immigration Services (USCIS) saw a significant increase in the number of registrations submitted compared to prior years. Specifically, we saw increases in the total number of registrations submitted, the number of registrations submitted on behalf of beneficiaries with multiple registrations, and the number of registrations submitted on behalf of unique beneficiaries with only one registration.

Based on information from the FY 2023 and FY 2024 H-1B cap seasons, USCIS has denied and revoked petitions where USCIS investigators found fraud and referred additional petitions for administrative fraud investigation. USCIS also continues to initiate law enforcement referrals for criminal prosecution in certain cases. USCIS has observed a decrease in filing rate for FY 2024 H-1B cap petitions and believes that these fraud investigations are having an impact. USCIS was able to select an additional 77,600 registrations in the second selection for the FY 2024 H-1B cap.

Further, DHS is considering regulatory changes in an effort to reduce the possibility of misuse and fraud in the H-1B registration system. We remain committed to deterring and preventing abuse of the registration process, and to ensuring that only those who follow the law are eligible to file an H-1B cap petition.

Brad Smith
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Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal flourish.

Ur M. Jaddou
Director