

Blog Post

# Luck Strikes Twice for Certain FY 2021 H-1B Petitioning Employers

June 28, 2021

By [Rachel L. Perez](#)

Certain U.S. employers now have a second chance to refile Fiscal Year 2021 H-1B lottery visa petitions that were rejected or administratively closed solely because of the requested employment start on the petitions. Employers must refile eligible FY 2021 H-1B cap petitions, with all applicable fees, before October 1, 2021.

Employers petitioning for cap-subject H-1B candidates are required each year to register electronically through the myUSCIS portal and pay a \$10 registration fee to be entered in the yearly lottery. Only employers with selected lottery registrations are then able to file complete H-1B petitions with USCIS within 90 days of selection notification. In practice, employers filing cap-subject H-1B petitions must request an employment start date of October 1 during the relevant fiscal year. In an unprecedented move, during FY 2021 the U.S. Citizenship and Immigration (USCIS) randomly selected H-1B lottery registrations during two separate periods to reach the congressionally mandated annual cap of 85,000 H-1B visas—a move that ultimately left employers confused about which employment start date to request for H-1B hopefuls.

USCIS completed the initial FY 2021 H-1B randomized selection process in March 2020, giving employers until June 30, 2020 to file eligible H-1B

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cap-subject petitions. However, because “the number of petitions filed during the initial filing period was below the number projected as needed to reach the numerical allocations”, according to USCIS, the federal immigration agency completed a second randomized lottery selection process in August 2020. Employers with registrations selected in August 2020 were given a 90-day window to file H-1B cap petitions that ended on November 16, 2020. As a result, some employers with registrations selected during the second filing period submitted H-1B cap petitions after October 1 that justifiably requested employment start dates after October 1. USCIS rejected or administratively closed such H-1B petitions, even if timely and properly filed, solely because the indicated employment start dates occurred after October 1, 2020.

In response, on March 11, 2021, a federal lawsuit was filed on behalf of seven U.S. employers arguing that USCIS arbitrarily and capriciously rejected H-1B cap-subject petitions filed after October 1 simply because the intended H-1B employment start was not backdated to October 1. On April 29, 2021, the plaintiffs dismissed the lawsuit after USCIS agreed to accept and adjudicate the H-1B lottery petitions previously rejected by the agency. Following the dismissal, on June 23, 2021, USCIS issued a public announcement stating that “we no longer believe that the regulations required us to reject or administratively close those petitions.”

U.S. employers with FY 2021 H-1B lottery petitions that were improperly rejected or administratively closed solely for requesting an employment start date after October 1 should follow these steps to resubmit such petitions before October 1, 2021:

- If your FY 2021 petition was rejected or administratively closed solely because your petition was based on a registration submitted during the initial registration period, but you requested a start date after October 1, 2020, you

may re-submit that previously filed petition, with all applicable fees, at the USCIS address below:

<b>USPS</b>	<b>FedEx, UPS, and DHL Deliveries</b>	<b>Forms I-129/I-907 Premium Processing</b>
USCIS TSC Attn: H-1B CAP Filings FY21 6046 N Belt Line Rd. STE 107 Irving, TX 75038-0010	USCIS TSC Attn: H-1B CAP Filings FY21 6046 N Belt Line Rd. STE 107 Irving, TX 75038- 0010	USCIS TSC Attn: H-1B CAP Filings FY21 6046 N Belt Line Rd. STE 907 Irving, TX 75038-002

- Such petitions must be resubmitted before October 1, 2021. If properly resubmitted, USCIS will consider the petition to have been filed on the original receipt date.
- When resubmitting the petition, you must include your FY 2021 H-1B cap registration selection notice.
- If you received a rejection or administrative closure notice for the original FY 2021 H-1B cap petition, you should include that as well.
- To help ensure that such petitions are reviewed upon receipt, USCIS also encourages employers to use a brightly colored coversheet indicating that you are refileing a FY 2021 H-1B cap case that was originally rejected or administratively closed solely because your petition was based on a registration submitted during the initial registration period, but you requested a start date after October 1, 2020.

Akerman's experienced immigration counsel is available to assist employers with business immigration matters and will keep clients abreast of developments as they occur.

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