

# Is it legal for an H1B employee to be the beneficiary of multiple lottery registrations?

## Synopsis

This question has created much confusion amongst the employers and the employees Because of a new declaration introduced by the USCIS. Every employer who signs up an H1B employee for the lottery registration must now declare “under penalty of perjury:”



**Rajiv Khanna**  
Managing Attorney,  
*Immigration.Com,*  
Contributor Content

The answer is, yes, if the lottery registration entries are not made by “related” employers, and the job offers are honest (bona fide).

This question has created much confusion amongst the employers and the employees Because of a new declaration introduced by the USCIS. Every employer who signs up an [H1B employee](#) for the lottery registration must now declare “under penalty of perjury:”

“[T]hat all of the information contained in the submission is complete, true, and correct. For FY 2023, the attestation that is required before submission will indicate, “I further certify that this registration (or these registrations) **reflects a legitimate job offer** and that I, or the organization on whose behalf this registration (or these registrations) is being submitted, **have not worked with, or agreed to work with, another registrant, petitioner, agent, or other individual or entity** to submit a registration to unfairly increase chances of selection for the beneficiary or beneficiaries in this submission.”

Khanna is a member of the Virginia and D.C. Bars and the principal of the Law Offices of Rajiv S. Khanna, PC. Since 1993, he has focused his and the firm's practice on employment and business-based immigration and related administrative and federal audits, investigations and litigation. The firm represents individuals and businesses from every major city in the US and internationally.

*The USCIS further cautions:*

“If USCIS finds that this attestation was not true and correct (for example, that a company worked with another entity to submit multiple registrations for the same beneficiary to unfairly increase chances of selection for that beneficiary), USCIS will find that registration to not be properly submitted. Since the registration was not properly submitted, the prospective petitioner would not be eligible to file a petition based on that registration in accordance with the regulatory language at 8 CFR 214.2(h)(8)(iii)(A)(1). **USCIS may deny or revoke a petition** based on a registration that contained a false attestation and was therefore not properly submitted. Furthermore, USCIS **may also refer the individual or entity** who submitted a false attestation to appropriate federal law enforcement agencies for investigation and further action as appropriate.”

The above declarations clarify an obligation that was implicit: the duty to act in good faith. Note that this was already the USCIS policy based upon their regulations and interpretive guidance.

The regulations provide: “ **Multiple H-1B petitions.** An employer may not file, in the same fiscal year, more than one H-1B petition on behalf of the same alien... filing more than one H-1B petition by an employer on behalf of the same alien in the same fiscal year will result in the denial or revocation of all such petitions.

If USCIS believes that related entities (such as a parent company, subsidiary, or affiliate) may not have a legitimate business need to file more than one H-1B petition on behalf of the same alien subject to the numerical limitations of section 214(g)(1)(A) of the Act or otherwise eligible for an exemption under section 214(g)(5)(C) of the Act, USCIS may issue a request for additional evidence or notice of intent to deny, or notice of intent to revoke each petition. If any of the related entities fail to demonstrate a legitimate business need to file an H-1B petition on behalf of the same alien, all petitions filed on that alien's behalf by the **related entities** will be denied or revoked.”

rejecting corporate identity as the basis for non-relatedness:

·For purposes of the regulatory bar against multiple registrations, “the term “related entities” includes petitioners, whether or not related through corporate ownership and control, that file cap-subject H-1B petitions for the same beneficiary for substantially the same job.”

·Some factors relevant to relatedness may include familial ties, the proximity of locations, leadership structure, employment history, similar work assignments, and substantially similar supporting documentation. The more similarities in the records, the more likely the companies were seeking to undermine the purpose of the random lottery process.

By adding the new declarations and imposing a possible penalty of perjury (a federal felony crime), the USCIS has added teeth to its requirements. There is no change in the underlying policy.

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