



CLIENT ALERT

U.S. CITIZENSHIP AND IMMIGRATION SERVICES SUSPENDS PREMIUM PROCESSING OF ALL H-1B VISA PETITIONS FOR UP TO SIX MONTHS: WHY THIS MATTERS

MARCH 2017

U.S. Citizenship and Immigration Services (USCIS) announced that it will suspend premium processing services for all H-1B cases as of April 3. Premium processing requests will be accepted for petitions that are currently pending or that are filed before April 3, but refunds will be issued for requests that are accepted before that date that cannot be acted upon within the requisite 15-day period.

USCIS stated that the suspension is part of an effort to improve overall H-1B processing times and to focus resources on long-pending cases and extensions for individuals nearing the 240-day mark past the expiration of their prior H-1B status (who risk losing work authorization after that point). The suspension of premium processing services may last up to 6 months, and USCIS will announce in advance when it will resume this benefit.

In limited situations, USCIS will still consider individual requests for an expedited adjudication where the employer can demonstrate that it meets certain criteria, such as the risk of severe financial loss to the employer due to long processing times, an emergency situation, humanitarian consideration, a cultural/social interest in expedited

processing (where the petitioner is a nonprofit organization), USCIS error, or a compelling USCIS interest in expedited adjudication of a petition. Crucially, such decisions are reserved to USCIS's sole discretion and have traditionally been made in only the most sparing of circumstances.

Employer Insights:

The administration's decision to suspend premium processing has immediate and significant consequences on employers and employees.

1) **Extension requests:** While USCIS claims that this decision is being made to accelerate processing times for all H-1Bs, there is no practical tool other than a expedite request to ensure that USCIS adjudicates an extension-of-status petition within 240 days of an H-1B visa holder's status expiration date. This date is critical because an employee with a pending H-1B extension request loses work authorization under the regulations if more than 240 days have passed since his or her H-1B status expired, if there is no approval of the extension. Given that premium processing is suspended as of April 3rd, there is still a short window of time for employers with



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long-pending extension requests to consider premium processing.

The suspension of premium processing also has other immediate consequences for individuals with pending extensions. They cannot travel internationally during the 240-day mark referenced above for personal or business reasons without abandoning the pending H-1B extension request.

2) **Cap-exempt employers:** Suspending premium processing will significantly slow down the ability of H-1B cap-exempt employers, such as Universities, hospitals, and nonprofit institutions to quickly secure the work authorization of employees who are seeking to change status from a different immigration status to H-1B. These employers can file H-1B petitions at any time. In such cases, no work authorization exists through the H-1B program until actual approval.

3) **Students sponsored for H-1B status this year:** Suspending premium processing could also impact students sponsored for H-

1B in the lottery this year. Many of them will secure automatic extensions of their F-1 OPT work authorization through Sept. 30th, 2017, under a provision called "cap-gap." In prior years, employers approaching the Sept. 30th mark for such individuals have been able to premium process the H-1B if it remains pending. If premium processing remains unavailable at that time, employees with pending H-1B change of status requests may be unable to work beyond Sept. 30th and also unable to travel internationally due to the potential abandonment of such application.

4) **Consulting companies/short-term placements:** This change will particularly impact consulting companies, where the business model involves short-term placements of employees at client sites. USCIS will not approve an initial application for an H-1B where an employee is moved to a new client site while the H-1B application remains pending. Longer processing times for these H-1Bs and the inability to premium process raises serious questions about the potential approval of such application.