

Temporary Suspension of Premium Processing Option for All H 1B Petitions

In the evening of March 3, 2017, U.S. Citizenship and Immigration Services ("USCIS") announced that its premium processing service will be temporarily suspended for all H 1B petitions filed on or after April 3, 2017. Currently, certain petitioners and applicants for employment related immigration benefits may take advantage of the premium processing service, a program wherein USCIS will make an initial decision on an application or petition within 15 days of receiving an additional fee of \$1,225 from the petitioner or applicant. This feature will now be temporarily suspended until further notice for all H-1B petitions filed on or after April 3, 2017, including all H 1B cap petitions, new H 1B cap exempt petitions, H 1B extension petitions, H 1B amendment petitions and H 1B change of employer petitions. USCIS warns the suspension may last up to six months.

For the present, the suspension will not apply to any other nonimmigrant (L 1, O 1, TN, etc.) or immigrant (I 140, etc.) categories or processes. USCIS stated the suspension will allow it to catch up on its massive backlog of filed H 1B petitions. USCIS will continue to accept and process premium processing requests for H 1B petitions filed before April 3, 2017. After that date, USCIS will only consider requests to expedite H 1B petitions that meet very strict expedite criteria (*e.g.*, severe economic harm, humanitarian concerns, etc.) on a case-by-case basis until the suspension is lifted.

With current H 1B processing times approaching nine months, the suspension of the premium processing service will almost certainly result in hardships for H 1B employers and workers. However, a few helpful provisions in current immigration rules and regulations should be kept in mind. First, the filing of a valid petition to extend an existing H 1B worker's status automatically extends his/her authorization to work for an additional 240 days from the date of his/her current H 1B expiration. Second, current H 1B status holders are automatically allowed to begin employment with a new employer upon the new employer's filing of a valid H 1B petition with USCIS and before the new H 1B petition is approved, provided the H 1B worker has maintained his/her current H 1B status until the new employer files its H 1B petition, the H 1B worker has H 1B time available, and the H 1B worker is not changing from a cap exempt to a cap subject employer.

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There will undoubtedly be some complications for those who employ H-1B workers as well as for H-1B workers themselves as a result of the announced temporary suspension of the premium processing service. We therefore advise H 1B employers and workers to meet with their immigration counsel to develop strategies to minimize the impact of the temporary suspension of the premium processing service for the H 1B category.

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