

ALERTS

Immigration Law Alert - Festina Lente (Make Haste Slowly): The USCIS Announces The Temporary Suspension Of Premium Processing For All H-1B Visa Petitions

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The U.S. Citizenship and Immigration Services (USCIS) announced that effective April 3, 2017, it will temporarily suspend premium processing for all H-1B cases, a suspension that may last up to six months. What this means is that during the suspension, applicants will not be able to have cases reviewed in 15 days by paying the \$1,225 premium processing fee. Applicants will have to potentially wait for months to have their cases reviewed.

This announcement comes at an inopportune time, as tens of thousands of H-1B applications are being prepared for filing and participation in the H-1B visa lottery; April 3, 2017 is the first day the USCIS will accept FY 2018 H-1B cap-subject applications. There are a total of 85,000 available visas and the expectation is that the number of applications filed will exceed 200,000.

The impact of the suspension is twofold: 1.) Applicants will have to wait a long time to find out if they were selected in the visa lottery and, if lucky enough to have been selected, to receive the adjudication, and 2.) Individuals who are applying to change status from a different visa category to H-1B are not allowed to travel outside the United States while the application is pending. Without premium processing, this may mean most of the summer, unless consular processing instead of change-of-status is requested on the application.

Even individuals who already have H-1B status and are changing employers will be affected. There is no true transfer of an H-1B visa; the H-1B, like other work visas, is employer and location specific. A change of employer requires the filing of a complete H-1B petition by the new employer. Employment with the new employer can start once the USCIS issues a filing receipt, if the visa-holder is maintaining status. However, most individuals who are changing employers would rather have an approval for the new H-1B before leaving their current job. Until now, that could be accomplished in 15 days with premium processing, but starting April 3, it could take months.

Applications that arrive at the USCIS before April 3, 2017, with a premium processing request and fee may or may not be adjudicated in 15 days. If they are not, the premium processing fee will be returned. Care must be taken to send the premium processing fee separately, not bundled up in one check with the other filing fees.

According to the USCIS website, while premium processing is

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suspended, petitioners may submit a request to expedite an H-1B petition if they meet the criteria on the Expedite Criteria webpage. It is the petitioner's responsibility to demonstrate that he or she meet at least one of the [expedited criteria](#). Such requests for expediting are rarely granted.

The USCIS has indicated, according to its website, that this temporary suspension of premium processing for H-1B visa petitions will enable them to:

- Process long-pending petitions, which we have currently been unable to process due to the high volume of incoming petitions and the significant surge in premium processing requests over the past few years; and
- Prioritize adjudication of H-1B extension of status cases that are nearing the 240 day mark.

For more information, contact the Barnes & Thornburg attorney with whom you work or Mariana Richmond at 317-231-7476 or Mariana.Richmond@btlaw.com.

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