Blog Post

Waitlisted: U.S. Employers Face Longer Delays for Hiring H-1B Workers

September 6, 2018
By Rachel L. Perez

Employers are alerted the extended suspension of Premium Processing will mean postponed start-dates for H-1B workers well beyond the expected October 1 annual start date. Moreover, because H-1B change of employer requests filed on or after September 11, 2018 will be subject to "normal" processing times, ranging anywhere from four to six months, employers better move fast to file these H-1B petitions using Premium Processing before September 11. For employers looking to benefit from Premium Processing after October 1, 2018, the government will require deeper pockets to cover the balances due for expedited adjudication.

Employers waiting to hire foreign professional workers are left in limbo over are the latest announcement by the U.S. Citizenship and Immigration Services. The ever-increasing H-1B adjudication process poses potentially disastrous risks for employers, foreign workers and H-1B hopefuls. On August 28, 2018, the Federal Immigration Agency announced it will be prolonging the previously advertised temporary suspension of Premium Processing for certain H-1B cases for an additional six months. The pause on premium processing for H-1B worker visas subject to the fiscal year 2019 lottery was originally slated to last until September 10, 2018, but that suspension is

Related People

Rachel L. Perez

Related Work

Immigration Planning and Compliance

Related Offices

Miami

HR Defense Blog

Akerman Perspectives on the Latest Developments in Labor and Employment Law

Visit this Akerman blog

now being extended through an estimated date of February 19, 2019.

Beginning September 11, 2018, the suspension of premium processing—a 15-day expedited service offered in exchange for a $1,225 filing fee—will also be expanded to spoil a wider scope employment opportunities for U.S. employers and businesses alike that benefit from the foreign worker program. To complicate matters further, starting October 1, the standard filing fee for Premium Processing will increase to $1,410-nearly a 14.92% increase since this fee was last adjusted in 2010.

For F-1 students currently maintaining status under the H-1B "Cap-Gap" extension, lengthy H-1B processing times are more likely to result in a lapse in work authorization as H-1B visa approvals become less likely to arrive via mail by October 1. Students in F-1 status who have been pursuing employment through valid Optional Practical Training (OPT) will be forced to forego further employment in the United States after October 1 until their H-1B petitions are approved. Travel outside the U.S. after an H-1B petition is filed is not recommended for any applicant requesting an initial change of status to H-1B classification. Travel during this timeframe may revoke Cap-Gap privileges, including legal work status for F-1/OPT students and could give rise to a determination by USCIS that the candidate abandoned their H-1B petition.

With the exception of a limited group of exempt cases, the expanded Premium Processing suspension applies to nearly all H-1B cases filed at the Vermont and California Service Centers. USCIS will continue Premium Processing for H-1B petitions that are not currently suspended if the employer properly files an associated request for Premium Processing service before September 11, 2018. The temporary suspension of Premium Processing does not apply to any other nonimmigrant visa classification for which a petition on Form I-129 is required.

USCIS will refund the Premium Processing fee to an employer in the following case:

- The petitioning employer files a request for premium processing service on Form I-907 for an H-1B petition before September 11, 2018; and
- USCIS does not take adjudicative action on the case within the 15-calendar-day processing period.

Premium processing will remain available for certain H-1B visa petitions, including:

1. Cap-exempt petitions that are filed exclusively at the California Service Center because the employer is cap exempt or because the H-1B worker will be employed at a qualifying cap exempt institution, entity, or organization; or
2. H-1B petitions filed exclusively at the Nebraska Service Center by an employer requesting a "Continuation of previously approved employment without change with the same employer" (Box b. on Part 2, Question 2, Page 2 of the current Form I-129) with a concurrent request to:
3. Notify the office in Part 4 so each beneficiary can obtain a visa or be admitted. (Box on Part 2, Question 4, Page 2 of the current Form I-129); or
4. Extend the stay of each beneficiary because the beneficiary now holds this status. (Box c. on Part 2, Question 4, Page 2 of the current Form I-129).

According to USCIS, the extended suspension will help the Immigration Agency to reduce overall H-1B processing times by allowing the Service to:

- Process long-pending petitions, which USCIS has been unable to process due to the high volume of incoming petitions and premium processing requests over the past few months;
- Be responsive to petitions with time-sensitive start dates; and

- Prioritize adjudication of H-1B extension of status cases that are nearing the 240-day mark.

While Premium Processing is suspended, employers may submit a request to expedite an H-1B visa petition if they meet certain Expedite Criteria established by USCIS. The employer must be able to demonstrate that they meet at least one of the expedite criteria, and should be prepared to submit documentary evidence to support their expedite request. USCIS reviews expedite requests on a case-by-case basis and requests are granted at the discretion of the office leadership.

To avoid adverse consequences to H-1B employers facing the Premium Processing suspension that will remain in effect until February 19, employers should contact an immigration attorney regarding any H-1B worker who may be impacted by anticipated processing delays, and may experience difficulty with international travel.

Akerman continues to monitor this situation and will report immigration developments as they occur.

This information is intended to inform clients and friends about legal developments, including recent decisions of various courts and administrative bodies. This should not be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this email without seeking the advice of legal counsel.