

USCIS Extends and Expands Suspension of Premium Processing Service for H-1B Petitions and Increases Premium Processing Filing Fee

August 31, 2018

U.S. Citizenship and Immigration Services (USCIS) announced that it is extending its temporary suspension (which has been in effect since April 1, 2018) of premium processing for "cap-subject" H-1B petitions. This temporary suspension, announced on August 28, 2018, will now continue through **February 19, 2019**, and will NOT be lifted September 10, 2018, as previously anticipated.

Further, beginning **September 11, 2018**, USCIS will be *expanding* this temporary suspension to include all H-1B petitions, with limited exceptions. The suspension is expected to last until **February 19, 2019**. Therefore, "non-cap H-1B petitions" requesting Premium Processing Service must be properly filed on or before **September 10, 2018**.

USCIS also published notice in the Federal Register on August 31, 2018 that effective **October 1, 2018**, the premium processing filing fee will increase from \$1,225 to \$1,410.

What Is Premium Processing Service?

Premium Processing Service provides expedited processing for certain petition types, including H-1B petition requests. If a petitioner or applicant files a request for premium processing and pays the required premium processing filing fee, USCIS guarantees the related petition will be processed (approved, Request for Evidence issued, or denied) within 15 days, or USCIS will refund the Premium Processing Service fee.

Who Is Not Affected by the Suspension?

- H-1B petitions filed by "**cap-exempt**" employers (**institutions of higher education; non-profit entities which are "related to" or "affiliated with" institutions of higher education; non-profit research organizations; or government research organizations**) or petitions filed for beneficiaries to work at a qualifying cap-exempt entity **are not affected** by this suspension, and can continue to file requests for premium processing service.
- H-1B petitions requesting a **continuation of approved employment, without change, with the same employer**, which are filed exclusively at the Nebraska Service Center, **are not affected**, and can continue to file requests for premium processing service.

How Does This Affect H-1B "Cap" Petitions?

For those affected by this suspension, this means that employers will continue to be ineligible to request premium processing of any H-1B "cap-subject" petition filed on April 1, 2018, which has not yet been adjudicated by USCIS. If an H-1B cap petition is not processed and approved prior to October 1, 2018 (which is typically the requested employment start date of these H-1B petitions), the H-1B beneficiary will not be able to begin work for the employer until their case has been approved by USCIS.

- For students in F-1 status, whose Optional Practical Training (OPT) expired/will expire between April 2, 2018 and September 30, 2018, and who have been granted continued employment authorization based on "cap-gap" protections, those students whose H-1B petitions have not yet been approved by September 30, 2018, **will be**

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permitted to remain in the US while the H-1B cap petition is pending, but will NOT be able to continue employment beyond September 30, 2018, until the H-1B case has been approved.

- For individuals residing abroad, they will ***not be able to apply for an H-1B visa stamp and travel to the US to begin employment,*** if the related H-1B cap petition is still pending with USCIS after October 1, 2018. These individuals will need to wait until USCIS processes the petition.

How Does This Affect Non-Cap H-1B Petitions?

For those affected, this means that beginning **September 11, 2018**, USCIS **will not accept** any requests for premium processing service, on any H-1B petitions that request a ***change in previously approved employment, an amendment of the prior H-1B petition, or a change of employer petition.*** USCIS will continue to process these cases via regular processing timelines.

Current processing times at the California Service Center are about 5.5-7.5 months, and at the Vermont Service Center are about 3-5 months.

How Much Is the Premium Processing Filing Fee?

Currently, the premium processing filing fee is \$1,225. Effective **October 1, 2018**, the premium processing filing fee will increase to \$1,410. The new filing fee will apply to **all** petition requests eligible for premium processing, **including H-1B petitions and I-140 petitions.** Any petitions or applications postmarked on or after October 1, 2018, must include the new fee. USCIS processes an average of 238,784 petitions filed with a request for premium processing service. USCIS plans to use the funds generated from the fee increase to make infrastructure improvements in adjudications and customer service processes, including hiring of additional staff, and technology system improvements. USCIS has indicated the additional staff hired through the premium processing funds will allow USCIS to provide premium processing service with less disruption and improve adjudications.

Please reach out to the immigration team at Miller Canfield for proactive strategy discussions on how this suspension may affect your recruiting efforts and continued employment of any employees affected by this suspension.