

FEDERAL AUTHORITIES UPDATE GUIDANCE ON EXPEDITE REQUESTS FOR WORKPLACE IMMIGRATION ISSUES

Insights
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In recent years, federal immigration officials have experienced severe backlogs in processing of various immigration applications. The cause for this delay has been a combination of the COVID-19 pandemic which led to a temporary closure of Application Support Centers (ASCs) and Field Offices, as well as increase in applications and petitions received by the agency. This delay has interrupted the lives of thousands of individuals eager to work and companies eager to hire or retain foreign employees. As a result, there has also been an increase in request to expedite pending applications and petitions. Recently, U.S. Citizenship and Immigration Services (USCIS) updated its [USCIS Policy Manual](#) to clarify various criteria and circumstances to request expedite treatment. What do employers need to know about these January 25 revisions and how can you take advantage of this process?

What are the Expedite Criteria or Circumstances Considered by USCIS?

The agency first outlines five criteria it will take into account when determining whether to put your request on the fast track.

- 1. Severe Financial Loss** – A company may request to expedite an application or petition, for example a pending work authorization application for an employee, if it can demonstrate that it would suffer severe financial loss without the action USCIS. Examples include either losing a contract or needing to lay off employees. An individual can also request to expedite a pending application such

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as a work permit application if they can demonstrate that failure to expedite the application would result in job loss – hence the inaction would lead to severe financial loss.

- 2. Emergency or Urgent Humanitarian Reason –** Humanitarian reasons include, but are not limited to illness, disability, extreme living conditions, death in the family, or a critical need to travel to obtain medical treatment in a limited amount of time. Emergency reasons may include urgent need for employment authorization for health care worker during the ongoing pandemic.
- 3. Nonprofit Organization –** A request to expedite can be made by a nonprofit organization on behalf of the beneficiary. Consideration may be given based on the beneficiary's specific role within the nonprofit in furthering cultural or social interests.
- 4. U.S. Government Interests –** Requests made by government agencies may include, but are not limited to, cases identified as urgent by other government agencies, including labor and employment agencies, and public safety or national security interests.
- 5. Other Circumstances –** For applications or petitions that require onsite inspections, USCIS recommends submitting requests to expedite after the inspection is conducted. The agency also recommends doing so where the request to expedite is for a benefit that is ancillary to a primary application or petition that is still pending. In such cases, requesting to expedite the primary application or petition (such as an Application to Extend/Change Nonimmigrant Status ([Form I-539](#)) or Petition for a Nonimmigrant Worker ([Form I-129](#))) instead of requesting to expedite the ancillary application (such as an Application for Employment Authorization ([Form I-765](#))) would better facilitate USCIS's ability to process the ancillary application faster.

What Employers Should Consider When Requesting Expedite Treatment

USCIS considers all expedite requests on a case-by-case basis. It has sole discretion to accommodate any expedite requests. Since granting an expedite request means that USCIS would adjudicate the requestor's benefit ahead of others who filed earlier, USCIS carefully weighs the urgency and merit of each expedite request.

Employers submitting requests to expedite pending immigration matters must provide all relevant evidence to help support their request. Additionally, employees must also provide all relevant evidence to show that delay in adjudication of a pending immigration matter would lead to job loss which would cause severe financial loss.

Federal Court Litigation Remains a Viable and Effective Option

It remains to be seen how faithful the USCIS will follow its expedite criteria. Despite USCIS's various reasons for its lengthy adjudication delay, an agency's duty to timely adjudicate applications remains unchanged. During the past several years, Fisher Phillips attorneys have deep experience litigating immigration petition delay cases in the federal district courts. In situations where USCIS refuses to timely adjudicate petitions, such litigation may be an effective tool to push the USCIS to act on the petitions.

Fisher Phillips will continue to monitor developments will provide additional guidance as it becomes available. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Immigration Practice Group](#).