



# **Suspension of Premium Processing for H-1B Cases Starting on April 3, 2017**

Insights

3.06.17

The U.S. Citizenship and Immigration Services (USCIS) has announced that starting on April 3, 2017 (and to continue for up to six months), it is suspending Premium Processing for all H-1B visa petitions, including petitions for change of status to H-1B or extensions. USCIS stated that the purpose of the suspension is to address overall backlogs in H-1B processing times and prioritize pending H-1B extension cases that have been pending for close to 240 days. This suspension does not apply to Premium Processing on any other type of case where Premium Processing is an option (such as Form I-140 Immigrant Petition or for L-1 status). Premium Processing is an option for certain immigration cases to secure faster processing by paying an additional filing fee of \$1225. Premium Processing generally means that a decision will be made on the case within 15 calendar days and the issuance of an email receipt and approval notice.

## **How will this suspension impact H-1B Cap cases?**

The suspension does not change the number of visas available nor does it change the legal requirements for H-1B filings. It is unclear how this will affect the timing of the notification on cases selected for the H-1B lottery. In 2016, the majority of cases filed under Premium Processing were receipted in May and June. Although we expect the USCIS to conduct its lottery in the same time frame as in previous years, we expect the notification to take longer as cases will not be eligible for electronic notification under premium processing. It is important to note that employees who will be working under “H-1B Cap Gap” can still continue to work if their H-1B case is accepted under the lottery and until October 1, 2017. Cap Gap refers to the automatic extension of work authorization for F-1 students who have an Employment Authorization Document (EAD) which expires after April 1<sup>st</sup> but is waiting for their H-1B case to be selected under the lottery system and processed.

## **How will this suspension impact H-1B change of employer petitions?**

H-1B employees on an existing H-1B can generally change employers upon confirmation of receipt by USCIS of their H-1B case. Without premium processing, the receipt might take 2-3 weeks to come by regular mail. In addition, many candidates prefer to wait for the actual approval notice for the new employer before being willing to resign from their previous employer. While Premium Processing is suspended, employers may need to educate recruiters on what is required to begin employment during a change of employer petition and adjust timeframes on start dates for employees changing employers.

### **How will this suspension impact H-1B extensions for existing employees?**

H-1B extensions for existing employees can be filed up to six months in advance of expiration. However, amendments and extensions of status can be processed where there is a change in the terms and conditions of the job (such as job duties or location). The standard for a change of job duties is fairly low so many employers should consider whether they want to try and file extensions under premium processing before the April 3<sup>rd</sup> suspension deadline. This can be particularly important for employees considering international travel towards the end of their existing status. Many states require driver's licenses to expire with a person's immigration status. Even a receipt documenting the timely filing of H-1B extension may not be enough to get an extension of a driver's license. For this reason, employers should be mindful of individuals who are in those states that will not renew an individual's driver's license without having an extension approval and make every effort to file the extension petition with the USCIS as early as possible. In some states, the presentation of the USCIS receipt notice will allow for a temporary extension (e.g., up to 90 days) of the driver's license.

### **Is there still a way to get processing expedited despite the suspension?**

USCIS will consider requests to "expedite" cases (which is different from Premium Processing), however, these types of request will be determined on a discretionary and case-by-case basis and will generally only be granted if there will be a financial loss to company, some compelling human interest reason, or due to USCIS error.

### **What to watch for:**

Once the suspension is lifted, employers will be able to upgrade pending cases to premium processing, as needed. We will continue to advise on developments and when the USCIS announces the reinstatement of premium processing services. In the meantime, work with immigration counsel to ensure that all H-1B petitions are filed on the earliest date possible and work with employees to determine travel dates and other personal matters that may impact their immigration status.