



# **Feds Extend Suspension Of Premium Processing For H1Bs**

Insights

8.31.18

Federal immigration authorities just announced that they will continue the ongoing suspension of premium processing for cap-subject H1B petitions, contravening earlier assertions that premium processing would be available starting mid-September. In the August 29 announcement made by U.S. Citizenship and Immigration Services (USCIS), the agency also announced that it will expand the suspension to include additional H1B petitions, continuing through an estimated date of February 19, 2019.

USCIS states that this suspension will help the agency reduce overall H1B processing times by allowing it to process the backlog of pending H1B petitions, especially those with time-sensitive start dates, and prioritize cases nearing the end of their 240-day extension period. What do employers need to know about this announcement?

## **Application Of Policy**

The expanded suspension of premium processing will apply to all H1B petitions filed at the Vermont and California Service Centers with two exceptions:

1. Cap-exempt H1B petitions filed exclusively at the California Service Center based on the employer's status as a cap exempt entity or because the beneficiary will be employed at a qualifying cap exempt institution, entity, or organization; or
2. Petitions filed at the Nebraska Service Center by an employer seeking "continuation of previously approved employment without change with same employer."

While USCIS will continue to process PP requests filed before September 10, 2018, if an H1B petition is filed after that date and does not fall into one of the two above listed exception, it will not be eligible for premium processing, possibly until February 19, 2019.

## **Impact Of Suspension**

One of the biggest impacts of this suspension will fall upon those working in the US under the "cap-gap" extension that grants that work authorization through September 30, 2018 and waiting for an H1B cap approval notice effective October 1, 2018. While USCIS states that the basis for the suspension is to allow the agency to process the most time-sensitive cases—presumably those cap subject filings—if it is not able to get all H1B cap cases processed by October 1, these students will need to stop working until they receive an approval. Without an option to convert to premium

processing, there is no guarantee of when that approval will come through and, consequently, when they can resume employment.

Further, the suspension could also greatly impact people already in the US and who have filed an H1B petition requesting a change of employer. First, they will no longer be able to obtain an expedited approval before moving to another employer. While they can still move to the new employer (receipt of filing by USCIS is enough for work authorization), they risk the possibility that the new petition is denied and they are then left without status or employment.

Further, the same people may find themselves not able to travel while they wait for their H1B to be processed under normal processing. This could severely limit the ability of these employees from traveling while waiting for H1B processing for several months.

### **Expedited Handling May Be Available**

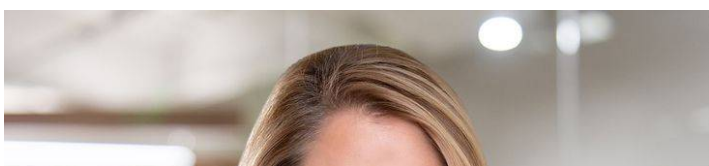
While halting premium processing for almost all H1B petitions, USCIS has provided an option to request expedited handling for those cases that meet at least one of the following criteria:

- Severe financial loss to company or person ;
- Emergency situation;
- Humanitarian reasons;
- Nonprofit organization whose request is in furtherance of the cultural and social interests of the United States ;
- Department of Defense or national interest situation (these particular expedited requests must come from an official U.S. government entity and state that delay will be detrimental to the government);
- USCIS error; or
- Compelling interest of USCIS.

When applying for expedited processing, the employer must demonstrate that they meet at least one of the expedite criteria and should be prepared to submit documentary evidence to support the request.

We will keep you notified on any further changes to the premium processing option and will address individual issues on current cases as needed.

### ***Related People***





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## ***Service Focus***

Immigration