

# CLIENT ALERTS

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## Changes in Premium Processing For Certain Employment Based Immigration Petitions

10.2.2018

This Client alert is to inform of changes in the processing of the “Premium Processing” option for Petitions for Employment Based immigration cases. Where appropriate, employers have sought to sponsor or petition future or existing foreign national employees to meet the demands of their business. These Employment Based Petitions are filed and adjudicated by the U.S. Citizenship and Immigration Service (“USCIS”). Employers may seek to have their Petitions handled as a “Premium Processing” matter when timing is a concern for an employer’s sponsorship of a foreign national employee by completing Form I-907 and paying the appropriate “Premium Processing fee.

When the Premium Processing fee is paid with any employment based Petition, the USCIS is obliged to process the matter in 15 days by either adjudicating the Petition in that time frame or issuing a Request for Evidence where the USCIS feels that additional evidence is needed to adjudicate the matter.

One recent change involves an increase in the Premium Processing fee. USCIS has announced an increase in the Premium Processing fee for Form I-129, Petition for a Nonimmigrant Worker and Form I-140, Immigrant Petition for Alien Workers. Both Form I-129 and Form I-140 Petitions are used in applying for immigration benefits on a temporary basis to allow a foreign national to work for a specific employer (in the case of Form I-129) or as part of the “green card” process in providing a more permanent way of allowing a foreign national employee to stay in the U.S. indefinitely (as in the case of Form I-140).

Beginning on October 1, 2018, the Premium Processing fee will increase from \$1,225.00 to \$1,410.00, which is a 14.92 percent increase. The fee was last increased in 2010 from its original amount of \$1,000.00.

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A second recent change regarding Premium Processing pertains to the expansion of the suspension of premium processing for certain H-1B Petition cases. The H-1B classification is reserved for employers seeking to sponsor foreign nationals eligible to work in specialty occupations such as professional positions including engineers, attorneys, and chemists. The H-1B classification is subject to a cap of 65,000 new H-1B approvals each government fiscal year. Since March 2018, the USCIS has suspended Premium Processing for H-1B cap subject Petitions.

Beginning Sept. 11, 2018, the USCIS expanded this temporary suspension to include certain additional H-1B petitions. This additional suspension will last until February 19, 2019. The expanded temporary suspension applies to all H-1B petitions filed at the Vermont and California Service Centers (excluding cap-exempt filings as noted below). The H-1B Premium Processing suspension does not apply to:

- H-1B Cap-exempt petitions that are filed exclusively at the California Service Center because the employer is cap exempt or because the beneficiary will be employed at a qualifying cap exempt institution, entity, or organization; and
- 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."

Employers and employees alike have sought the Premium Processing feature for applicable Petitions for strategic reasons impacting an employee's immigration case. We recommend that employers and individuals consult with immigration attorneys to review their matters prior to seeking U.S. immigration benefits for their foreign national employees.

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