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USCIS Temporarily Suspends Premium Processing for H-1B Petitions

1.19.2021

Starting April 3, 2017, the United States Citizenship and Immigration Services ("USCIS") will temporarily suspend premium processing for all H-1B petitions. This suspension may last up to 6 months. Because Fiscal Year 2018 cap-subject H-1B petitions cannot be filed before April 3, 2017, this suspension will apply to all petitions filed under H-1B regular cap and master's cap for this year. The suspension also applies to cap exempt petitions, extensions, and amendments. Under premium processing employers have been able to have a decision made on their H-1B Petitions in 15 calendar days for an additional fee of \$1225. Regular processing of H-1B petitions can take several months. The unavailability of premium processing may result in significant issues for employees including the ability to travel and obtain new visas. Some States such as Michigan also limit the expiration of the driver's license to the expiration of the immigration status. The unavailability of premium processing will affect an H-1B worker's ability to seek renewal of his or her driver's license.

While premium processing is suspended, petitioners may submit a request to expedite an H-1B petition if they meet one of the expedite 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 U.S.; Department of Defense or national interest situation; USCIS error; or compelling interest of USCIS. The USCIS has stated that the purpose of this temporary suspension is to reduce overall H-1B processing times. During this time, USCIS plans on processing long-pending petitions; and prioritize the adjudication of H-1B extension of status cases that are nearing the 240 day mark, as the automatic extension of employment authorization only lasts for 240 days after an H-1B extension is filed.

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For additional information see: <https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions>.

New Executive Order- Protecting the National from Foreign Terrorist Entry

On March 6, 2017, President Trump issued a new Executive Order (<https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>) revoking the previous Executive Order of January 27, 2017. Starting, March 16, 2017 individuals from 6 countries – Iran, Libya, Somalia, Sudan, Syria and Yemen – will generally not be able to enter the United States for at least 90 days if they are outside of the U.S. on March 16, 2017, did not have a valid visa as of 5:00 p.m. Eastern Standard Time on January 27, 2017, and do not have a valid visa on March 16, 2017. Iraq is no longer part of the travel ban, but the order does call for extreme vetting and additional inquiries for Iraqi nationals seeking entry into the United States.

Nationals from one of the 6 countries are exempted from the new travel ban if they are: legal permanent residents of the U.S.; foreign nationals admitted or paroled into the U.S. on or after March 16, 2017; foreign nationals with valid travel documents, such as valid visas and Advance Parole documents valid on or after March 16, 2017; dual nationals if the individual is traveling on a passport issued by a non-designated country; foreign nationals traveling on diplomatic visas; foreign nationals who have been granted asylum; refugees who have been admitted to the U.S.; or any individuals who have been granted with withholding of removal or protection under the Torture Convention.

Nationals from one of the 6 countries who are not exempted from the Travel Ban can obtain waivers from a Consular Officer or by Customs and Border Protection if there will be undue hardship; the entry would not pose a threat to national security; and would be in the national interest. The new Order provides several examples where waivers may be appropriate, including foreign nationals who were previously admitted to the U.S. for work or study and now seek to reenter the U.S. to resume that activity; and foreign nationals seeking to enter the U.S. to visit or reside with a close family member (e.g. spouse, child or parent) who is a U.S. Citizen, Legal Permanent Resident or foreign national lawfully admitted on a valid nonimmigrant visa.

Under this new Order no visas issued before March 16, 2017 will be revoked; individuals whose visas were marked revoked or marked canceled as a result of the previous travel ban shall be entitled to a travel document confirming that the individual is permitted to travel the U.S. and seek entry (practically speaking these individuals will need to obtain new visas if their visas were marked canceled or revoked); and visas that were provisionally revoked visas are now valid once more. USCIS will continue to adjudicate Applications for Nationalization (Form N-400) and Applications to Register Permanent Residence or Adjust Status (Form I-485) filed by applicants from the designated countries. Also under the new Order all individuals applying for non-immigrant visas will be required to attend an in-person interview.

Refugees from any countries will generally not be admitted for 120 days after March 16, 2017. The new Order caps the total number of admissible refugees for Fiscal Year 2017 at 50,000. Refugees who already are scheduled to enter the country will be allowed to do so and there is a case-by-case

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waiver process administered by Secretary of State and Secretary of Homeland Security.

Additional information can be found in the Q&A from the Department of Homeland Security: <https://www.dhs.gov/news/2017/03/06/qa-protecting-nation-foreign-terrorist-entry-united-states>.

A number of States and interested parties have commenced or expressed an intention to litigate the matter as was the case with the previous travel ban. Please understand that we expect that this situation continues to remain fluid and may change at any time.

Updated Handbook for Employers: Guidance for Completing Form I-9

USCIS has recently published the updated M-274, Handbook for Employers: Guidance for Completing Form I-9 (PDF, 5.36 MB). The handbook includes guidance for employers with detailed guidance for completing Form I-9, Employment Eligibility Verification; and also includes new sections about automatic extension of employment authorization documents in certain circumstances, and correcting Form I-9. Changes to the handbook are outlined in the Table of Changes for Revised M-274 (PDF, 495 KB). The new handbook is dated Jan. 22, 2017, and reflects revisions to Form I-9, which was revised on Nov. 14, 2016.

This alert is not legal advice. We recommend that you contact any attorney in our Firm's Immigration Department to discuss specific concerns.

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