

H-1B Petition Premium Processing Suspended as of April 3, but the H-1B Cap Lottery Moves Forward

March 6, 2017

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Starting April 3, 2017, USCIS will temporarily suspend premium processing for all H-1B petitions. This suspension may last up to 6 months. While H-1B premium processing is suspended, petitioners will not be able to file Form I-907, Request for Premium Processing Service for H-1B visas and cannot expect any petitions to be adjudicated in under 15 days.

Who will be affected:

The temporary suspension applies to all H-1B petitions filed on or after April 3, 2017. Since FY18 cap-subject H-1B petitions cannot be filed before April 3, 2017, *this suspension will apply to all petitions filed for the FY2018 H-1B regular cap and master's advanced degree cap (the "master's cap") cases.* The suspension also applies to petitions that may be cap-exempt.

Will this impact the H-1B cap lottery selection?

As of now, we have no indication that the process and timetable for selection of H-1B cap petitions for processing and notifying petitioners will be any different this year. Last year, USCIS announced that the selection process had been completed as of April 12, 2016. Of course, additional announcements could be forthcoming.

Can I still file premium processing now?

Any H1B petitions filed now, or currently pending can still be converted to premium processing prior to Friday, March 31, 2017 since at this time it appears USCIS will continue to premium process H-1B petitions if the petitioner properly filed an associated Form I-907 before April 3, 2017. USCIS, however, reserves the right as they always do, to refund the premium processing fee if they did not take adjudicative action on the case within the 15-calendar-day processing period.

Does this suspension apply to other categories?

This temporary suspension of premium processing does not apply to other eligible nonimmigrant classifications filed on Form I-129.

Is there any way to have my application expedited?

While premium processing is suspended, petitioners can submit a request to expedite an H-1B petition if they meet the criteria. The petitioner must demonstrate that they meet at least one of the expedite criteria outlined below. Our experience however is that USCIS does not tend to review expedite requests favorably in the majority of cases. Given the number of potential expedite requests in response to the suspension of premium processing, this is likely to remain true.

USCIS may expedite a petition or application if it meets one or more 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 expedite 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.

Reasons for suspension:

USCIS claims this temporary suspension will help them to reduce overall H-1B processing times. It has been a challenge for USCIS to address long pending petitions that they have been unable to process due to the high volume of incoming petitions and a significant surge in premium processing requests over the past years.